CANADIAN STUDIES

IN

COMPARATIVE POLITICS

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COMPARATIVE POLITICS.

CHAPTER 1.

THE ENGLISH CHARACTER OF CANADIAN INSTITUTIONS.

The history of the political development of the several provinces which now constitute that wide Dominion, extending from Cape Breton on the Atlantic coast to Vancouver on the Pacific shores, possesses many features of considerable interest for the student of comparative politics. Canada may be considered with obvious truth to be "the heir of all the ages." In the language, the civil law, and the religion of French Canada we see the powerful influence of that Rome which has made so permanent and remarkable an impress on the communities of the old world even from times when America was wrapped in impenetrable mystery, and there existed only vague traditions of a lost Atlantis, an island continent lying in the Atlantic ocean over against the Pillars of Hercules. In the language, in the common law, in the capacity for self-government, and in the spirit of liberty we find a noble heritage which the English inhabitants of Canada derive from their Teutonic ancestors who acquired Britain and laid the foundations of institutions which have been the source of the greatness of England and of all countries which have copied her constitutional example. The French Canadians, like the English Canadians, can trace their history back to times when the Teutonic people, the noblest offspring of the Aryan family of nations,[1] conquered the original Celtic inhabitants of Gaul and Britain. But the results of this momentous conquest were very different in the ancient homes of the two races that now constitute the Canadian people. The Teuton became in the course of time absorbed in the mass of the conquered, and Rome was able to make an impress on the language and institutions of the country, now known as France, which was never made among the inhabitants of the parent state[2] of the English Canadian.

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[1] High authorities now argue, and the theory is gaining ground, that the Aryan race is really of European origin, and not an immigrant from the East. Penka maintains that it is represented only by the North Germans and Scandinavians.—Penka, "Die Herkunft der Arier" (Wien, 1886).

[2] "The conquest of the British Isles by the Saxons, Angles and Jutes from the middle of the fifth century has the character of a gradually advancing occupation. The disunited Britons, some of them grown effeminate, while others have become savage, are overcome after numerous battles with varying issue; the civic settlements, dating from the days of the Roman sway, fall into ruins; the old Roman culture disappears, and with it Christianity; the aboriginal population is either driven into the hills or reduced by oppression to a state of slavery or to the position of impoverished peasants. Hence, in England, those peculiar conditions are wanting which in Western Europe arose from a mixture of the Germanic races with a Romanized provincial population, with Roman culture, and with the Roman provincial and ecclesiastical constitution."—Gneist, "Constitutional History of England," ii. 1, 2. Stubbs says "Select Charters," p. 3: "From the Briton and Roman of the fifth century we have received nothing. Our whole internal history testifies unmistakably to our inheritance of Teutonic institutions from the first immigrants. The Teutonic element is the paternal element in our system, national and political."

The Teuton gave his name and language to England, and from the day he left his original home on the lowlands about the Elbe and Weser his history in the land he conquered is the evolution of the great principles of self-government and free speech from the germs of the institutions he brought with him from his fatherland.[1] The Norman himself, who came in later times to conquer the new home of the Anglo-Saxons and Jutes, was of the same descent as the people over whom he ruled, but his history is of itself an illustration of the remarkable influence of Rome over the peoples of the continent of Europe. Like the Frank who belonged to ancient Germania[2] and has given his name to France, the Norman who came from Scandinavia, eventually succumbed to the powerful influence of the Roman tongue and the Roman code. The Norman brought into England the institutions he had absorbed from Rome, but despite his influence on the government, the courts, and the aristocratic system of the country, it remained English in all those essential respects calculated to give stability and happiness to a nation. The language of the people was enriched by many new words applicable to the work of administration, legal procedure, and ecclesiastical institutions. The great national assembly of the English, the Witenagemot, became eventually a Parliament because William the Conqueror had "deep speech" with his assembly of wise men. French was long used in English legislative records; it was the language of the Court, as indeed it continued to be in Europe down to recent times; but the vigorous English tongue, racy of the soil, instinct with the social and political life of the people, ever remained the speech of England, while incorporating such new terms as were necessary to a changed order of things.[3] The representative system which gradually evolved itself in the hundreds and shires as a natural sequence of the English primary assemblies in the townships was essentially English.[4] We can see the impress of the famous code of Rome in the system of

[1] See Guizot, "Histoire du Gouvernement Représentatif," i. 42, 43. "C'est le peuple moderne qui a le plus vécu, pour ainsi dire, dans son propre fonds, et enfanté lui-même sa civilisation. Ce caractère éclate dans toute son histoire, et même dans sa littérature. Chez les Francs et les Visigoths les anciennes assemblées nationales germaniques ont été ou longtemps suspendues ou transformées; chez les Anglo-Saxons elles n'ont jamais cessé; elles venaient d'année en année perpétuer les anciens souvenirs et exercer sur le gouvernement une influence directe. C'est donc chez les Anglo-Saxons que, du cinquième au onzième siècle, les institutions ont pris le développement le plus naturel et le plus complet."

[2] "Il y a lieu de croire qu'ils (les Francs) ne formaient pas au Germanie une nation unique et homogène. C'était une confédération de tribus établies entre le Rhin, le Mein, le Weser et l'Elbe."—Guizot, "Histoire du Gouvernement Représentatif," i. 128.

[3] "The language, the personal and local names, the character of the customs and common law of English, are persistent during historic times. Every infusion of new blood since the first migration has been Teutonic; the Dane, the Norseman, and even the French-speaking Norman of the Conquest serve to add intensity to the distinctness of the national identity. The language, continuous in its perfect identity from the earliest date, unchanged in structure and tenacious in vocabulary, has drawn in from the Latin services of the Church, and from the French of the courts, new riches of expression."—Stubbs, "Select Charters," p. 2.

[4] "The village community which appears in Germany as the mark reappears as the tun or township in Britain, where it becomes 'the unit of the constitutional machinery' Stubbs, "Const. Hist.," i. 71. The township, like the mark, is at once a cultivating and a political community, and in its qualified members resides the power to order their own village and agricultural life. This power is vested in the village assembly or tun-moot, in which the townsmen regulate the internal affairs of the township by the making of 'by-laws,' a term which is said to mean laws enacted by a 'by,' as the township was called in the northern shires. The tun-moot elected its own officers and provided for the representation of its interests in the courts of the hundred or shire, where the gerefa and four discreet men appeared for the township. In this arrangement appears the earliest form of the representative principle."—Hannis Taylor, "Origin and Growth of the English Constitution," i. 12. See also Stubbs, "Select Charters," pp. 8, 9.

equity jurisprudence, but it was never formally adopted as one of the institutions of the country, as on the continent of Europe. That great system of common law which has been handed down to us from the earliest times of which we have accurate records, broadening from precedent to precedent, ever continued to grow in strength as being in harmony with the political and social instincts of a people loving liberty and self-government, and having had exceptional opportunities of keeping free from the dominating influences of Rome.

By the beginning of the seventeenth century, when England and France had entered into that great contest for the possession of an empire in the new world of America, which was not to end until the middle of the next century, the leading institutions of the two countries were in essential respects based on opposite principles, originating in a measure from their respective social and political conditions, but mainly from the fundamental ideas which governed in the one case a people clinging to Teutonic self-government, and in the other a people who had lost all control over their original local institutions and yielded to the centralizing influences of the regal power. In the course of time the feudal system, which so long dominated and divided France, became gradually weakened under the persistent efforts of the ablest of the feudal chiefs, who were long known as dukes of France, and who out of the ruin of the feudatories built up a monarchy which gradually centralized all power in the king.[1] In the old provinces of France there existed for centuries, a system of local government, which, if it never attained the significance of the institutions of England, at all events gave the people a small share in the administration of such local affairs as were necessary to their comfort, convenience and security, and which, in many communities, especially in certain cities and towns, was a bulwark against the rapacity and oppression of great nobles. Some of the provinces even possessed local representative bodies of the nature of similar English institutions. As in all countries which had been overrun and conquered by the hordes of Germany, there grew up, in the course of time, a representative body in which the three estates of nobles, clergy and people were able to assemble for certain common purposes, although they never appear to have possessed the legislative power or to have reached the practical usefulness of the great national council known as the parliament of England. The *Etats-Généraux*, or States-General, gradually diminished in influence according as the centralizing tendencies of the Crown increased, until at last by the beginning of the seventeenth century they ceased to meet.[2] During the century and a half France exercised dominion over that vast region watered by the St. Lawrence, the Great Lakes, the Ohio, and the Mississippi rivers, and reaching as far as the Gulf of

[1] The German tribes which conquered Gaul possessed free local institutions like the Angles, Saxons and Jutes, but their local freedom soon succumbed under the influence of the great feudal proprietors. Then, says Guizot, came a contest between the feudal system and monarchy. Local institutions, conserving a measure of freedom struggled for existence amid these conflicts of great social and political powers. Charlemagne made use of them to give strength to his power in France, but eventually they almost perished except in a few towns and corners of provinces, where they showed signs of existence until an all-powerful monarchy crushed them to all intents and purposes. "Nous avons observé quelque chose d'analogue dans l'histoire des Anglo-Saxons; mais là le système des institutions libres n'a jamais péri; la délibération commune des propriétaires libres, dans les cours de comté, a toujours subsisté."—Guizot, i. 239, 240.

[2] The States-General of France, which owed their origin to Philip the Fair in 1302, ceased to meet from 1614 to 1789. See 'Chéruel, Dictionaire Historique des Institutions de la France;' Art. "Assemblées Politiques."

Mexico, the States-General of France were never called together, and the king possessed an absolute, uncontrolled authority. The policy of the Capets had borne its legitimate fruit; in the course of centuries the power of the great nobles, once at the head of practically independent feudatory provinces, had been effectually broken down; withdrawn from the provinces, they ministered to the ambition of the king and added grace and lustre to a voluptuous court. A shadow of local government lingered in a few towns which had wrung charters from the necessities of great nobles in feudal times, but the provincial estates merely existed in name, since they met only on the order of the king, and their proceedings were of no effect unless they were approved by the same absolute authority. Great nobles were nominally governors of provinces, but their power was virtually a nullity since they had no control over the affairs of these local divisions. Officers, known as intendants, were, in the course of time, invested with large authority over questions of finance, justice, and police, and were among the most important functionaries evolved out of the autocratic system designed to concentrate all power in the king.[1] The parliaments of the provinces, of which the parliament of Paris was the chief, in no respect bore an analogy to the great bodies which in England exercised legislative powers and voted the taxes. They were strictly judicial bodies which always performed important functions with due deliberation and caution; but even they, in the discharge of such legal duties, could be forced to register the decrees of the king.[2] The council of state which long exercised judicial powers, like the permanent council of the Norman kings, found itself, in the course of time, divested of its functions in this particular by the parliament of Paris, and was gradually confined to purely political duties as the king's "cabinet council," to use a political expression which was coined in the days of the Stuarts. In short, in all matters which concerned the state, the king had centred all substantial power in the Crown. The frequently quoted saying of Louis Quatorze, *l'état c'est moi*, summed up the government of France.

In striking contrast with the centralization and absolutism of France was the development of free institutions in England, the land of the Teutonic people whose original home was in the district now known as Sleswick.[3] Despite the efforts of the kings to increase their power and repress what were, in their opinion, the unwarrantable

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[1] The office of intendant originated in the days of Richelieu, and appears to have been connected with the revenue. It is probable he was intended to have functions like those discharged originally by the sheriff or scirgerefa of England (see *infra*, p. 33). Guizot tells us that these officials became, in the course of time, "magistrates whom the king sent into different parts of the kingdom to look to all that concerned the administration of justice, of police, and of the finances; to maintain good order and to execute such commissions as the king or council laid upon them." See Chéruel, on the subject of the *Etats Provinciaux*.

[2] See Parkman, "Old Régime in Canada," p. 268; Lareau, "Histoire du Droit Canadien," i. 59 *et seq.*

[3] The Angles migrated bodily from "the land of Angeln;" that is, the territory between the Schley and Flensborg, and surrounding districts, so that this part of Schleswig is described as remaining long afterwards uninhabited. In the petty states north of the Thames, such as East Anglia and West Anglia, this tribal name survived for centuries, and at last gave the name of Anglia to the whole land, either in contradistinction to the continental Saxons, or because in their secluded settlements the Angles had preserved a firm coherence.—Gneist, "Student's History of the English Parliament," p. 4. The Jutes were men of a tribe "which has left its name to Jutland, at the extremity of the peninsula that projects from the shores of North Germany, but who were probably akin to the race that was fringing the opposite coast of Scandinavia and settling in the Danish Isles." The settlement of the Jutes was soon followed by Saxon descents on either side of the Caint. But the names of Jutes and Saxons were destined to be absorbed in that of the Angles or Engle or Englishmen.—Green, "The Making of England," chap. i.

pretensions of their parliaments whenever they did not coincide with their claim of prerogative rights, the English people had succeeded by the time the great English emigration to New England took place during the first part of the seventeenth century in developing from the free institutions of their Teutonic ancestors a parliamentary system which gave expression to the people's will and preserved the people's liberties in the end. Nothing strikes the political student more forcibly than the fact that while in France and other countries conquered by the German tribes there was a steady decline in local self-government and a steady increase of regal power, on the other hand, there was a continuity and expansion of the free institutions of England from the earliest times. Crises have arisen to threaten the continuity of that development, but despite many checks to free speech and thought, and many diversities in the methods of government, the current was ever in the direction of the establishment, on firm foundations, of the most perfect system of parliamentary government the world has ever seen.[1]

We may trace the evolution of that system through the history of the primary assemblies of the village communities of early English times, of the folk-moots of the ancient kingdoms and shires, of the Witenagemot or assembly of the wise men, of the great council of the Norman kings, down to the first parliament under Edward I. in 1295, when we see, at last, a complete organization of the machinery of that famous national council which is the prototype of the legislative bodies which have exercised such a dominant influence on the destinies of England and her colonial dependencies.[2] The spirit of a people accustomed to free institutions was ever ready to assert itself in all national crises, and, with the disappearance of the Stuart dynasty and the coming of William the Third to England, parliament became practically the sovereign authority in the state and the English monarchy itself depended thenceforth, not on any assertion of divine right, but on an act of the great legislature of the nation, which, while recognizing the necessity of the hereditary principle, gave full expression to the national will—that national will which has always governed England from the earliest times of her history.[3]

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[1] "Des deux systèmes d'ordre social et politique contenus dans le berçeau des peuples modernes le système féodal et le système représentatif, le dernier a longtemps prévalu en Angleterre, le premier a longtemps dominé en France. Les anciennes institutions nationales des Francs se sont abimées dans le régime féodal, à la suite duquel est venu le pouvoir absolu. Celles des Saxons sont, au contraire, plus ou moins maintenues et perpétuées, pour aboutir enfin au régime représentatif, qui les a rendues claires en les dévéloppant."—Guizot, i. 162.

[2] Simon de Montfort must always be remembered by the English people and their descendants as the founder of the House of Commons, but it is not until 1295 (23rd Edward I.) that the transitionary period of the constitutional history of England closes, and the three estates of the realm are represented in a really national parliament. Ever since that year, "parliaments, after the model of Simon de Montfort's famous assembly, have been regularly summoned in continuous, or almost continuous succession. The essential basis of the English constitution, government by King, Lords, and Commons, may be said to have been definitely fixed in the reign of the Great Edward."—Taswell-Langmead, "English Constitutional History," pp. 246-251. See also Stubbs, "Select Charters," pp. 35-51.

[3] "For nothing is more certain than that the Crown is more strictly and undoubtedly hereditary now than it was in the days of the Normans, Angevins, and Tudors. . . . In the existing state of our institutions the hereditary character of our modern kingship is no falling away from ancient principles; it, in truth, allows us to make a fuller application of them in another shape. In an early state of things, no form of government is so natural as that which we find established among our forefathers. A feeling which was not wholly sentimental, demanded that the king should, under all ordinary circumstances, be the descendant of former kings. But a sense that some personal qualification was needed in a ruler, required that the electors should have the right of freely choosing within the royal house. In days when kings governed as well as reigned, such a choice, made with some regard to the

The great conflict which was to end in the ruin of the Stuarts, and in the complete triumph of parliamentary government, was fought out during the times when the people of the thirteen colonies were establishing themselves on the Atlantic seaboard. While Charles the First was fighting that battle with parliament, which was to end in his downfall and death, New England was founded. That critical period which elapsed from the indiscreet assertion of royal prerogative by Charles the First down to the flight of James the Second and the coronation of William of Orange, was fraught with results of great importance to the English people both in Europe and America. The contest in England was between the undue claims of royal prerogative and the principles of parliamentary government. The real strength of the stern Puritanism which founded New England, and gave strength to the Ironsides of Cromwell, lay in the fact that it was associated, in the minds of the yeomanry and the lesser gentry, with the principle of self-government. The uncompromising self-asserting spirit represented by Calvin, aptly called "the constitutional lawyer of the Reformation,"[1] gave religious fervour and mental vigour to English Puritanism in its struggles with royal arrogance. While in the course of time it developed harsh and narrow features, which were in the main antagonistic to the real character of the English people, but which have nevertheless made their influence felt until the present time, it certainly succeeded in leaving the deepest impression on Scotland, the temperament of whose people was well suited to the controversial spirit and dogmatic theology of Calvinism as it was preached in the trying days of the seventeenth century. Puritanism became at last in its practical working the remonstrance of the people against the efforts of the Stuarts to crush the liberties of the nation.[2] It gave expression to the individualism of the English people in whose hearts there was ever existent that spirit of liberty, which is natural to communities sprung from the Teutonic people.

The colonies of England and France were accordingly founded under very dissimilar conditions; in the one case antagonistic to the establishment of self-government, and in the other well adapted to develop a spirit of sturdy independence natural to the English people. From the day the king of France assumed the government of New France, there was never given an opportunity to the people of the colony to govern themselves, or even express their opinions with freedom. The same illiberal, autocratic system, that was so fatal to representative institutions in the parent state, prevailed down to the cession of

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personal qualities of the king chosen, was the best means for securing freedom and good government. Under the rule of a conventional constitution, when kings reign but do not govern, when it is openly professed in the House of Commons that it is to that House that the powers of government have passed, the objects which were once best secured by making kingship elective are now best secured by making kingship hereditary. It is as the Spartan King said: By lessening the powers of the Crown, its possession has become more lasting.... The will of the people, the source of all law and all power, has been exercised, not in the old form of personally choosing a king at every vacancy of the Crown, but by an equally lawful exercise of the national will, which has thought good to entail the Crown on a particular family."—Freeman, "The Growth of the English Constitution," pp. 145-155.

[1] Fiske, "The Beginnings of New England," p. 57.

[2] "With the belief of the Calvinist went necessarily a new and a higher conception of political order. The old conception of personal rule, the dependence of a nation on the arbitrary will of its ruler, was jarring everywhere more and more with the religious as well as the philosophic impulses of the time.... The Puritan could only conceive of the kingly power as of a power based upon constitutional tradition, controlled by constitutional law, and acting in willing harmony with that body of constitutional councillors in the two Houses, who represented the wisdom and will of the realm."—Green, "History of the English People," iii. 16, 18.

Canada to England. The government was, practically, that of a province in France. The governor was generally a noble and a soldier; but while he was invested with large military and civil authority, under the royal instructions, he had ever by his side a vigilant guardian, in the person of the intendant, who possessed, for all practical purposes, still more substantial power, and who was always encouraged to report to the king every matter that might appear to conflict with the principles of absolute government laid down by the king.

The superior council [1] of Canada, like the great council of state in France, before its duties were distributed among other bodies, possessed judicial, administrative and even legislative powers, but its action was limited by the decrees and ordinances of the king, and its decisions were subject to the control of the royal council. It was not possible to expect that representative institutions could be established in a colony of a kingdom where the states-general themselves had ceased to meet. A country, governed as a province, like Canada, had no right to look for even a semblance of those municipal institutions of which a vestige still existed in France. It was a government of decrees and ordinances which regulated the political, religious and every day life of the inhabitants. Public assemblies for the discussion of even the most trivial affairs were consistently repressed, and the only opportunity ever given the people of a parish of talking over matters interesting to them was at the door of the village church after mass. The Church of Rome had, from the earliest times in the colony, made its influence all powerful, even at the council board, and in the affairs of the country generally. Protestantism was unknown, for the king had decided to keep the colony perfectly free of all heretics.[2] If men were so bold as to take exception to Rome's infallible dogmas, the Church, with the approval, and even aid, of the State, was ever ready to assert its control over the conscience and thought of the people committed to its care, but its power was evoked only in the very rare cases when it was necessary to punish some indiscreet member of its flock for some hasty assertion of the right of free speech. No Roger Williams was forced to fly from French Canada into the western wilderness to found a state where men of all creeds and beliefs would be allowed to remain; no Quakers were persecuted and hanged as in the land of the Puritans; but if these things did not happen, it must not be assumed that there was in Canada, more than in any other part of the world in those days, a spirit of toleration and a readiness to admit men of all opinions and beliefs, but it was simply because the country was open only to the adherents of the religion of Rome.[3]

In the thirteen English colonies which stretched, on the Atlantic coast, from French Canada to Spanish Florida, there were representatives of all classes of Englishmen,

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[1] The change of name from the "supreme" to the "superior" council indicates the spirit of monarchical pretensions in those days; Canadians could not be allowed even to use a "name" which conveyed the idea of independent powers. See Lareau. i. 110.

[2] "Mémoire du Roy à Mons. de Denonville, le 31 mai 1686." 'Collection de manuscrits relatifs à la Nouvelle France, Québec,' i. 362, 363. M. de Laval wrote from Quebec in 1661: "Nous ne souffrons ici aucune secte hérétique; c'est ce que le Roi m' a accordé pieusement sur la demande que je lui en ai faite avant de quitter la France." 'Arch de la Propagande,' vol. "America," 3, "Informatio de Statu Ecclesiæ," 21 octobre, 1661, vol. 29.

[3] Abbé Faillon, "Histoire de la Colonie Française en Canada," i. 229, 269, 270, says that in founding New France, Louis XIII and Cardinal Richelieu wisely concluded that it should be colonized only by Roman Catholics. At the same time the ruling spirits of New England were practically endeavouring to establish a state on the narrowest Protestant principles. See *infra*, p. 10.

and also a few Swedes and Dutch, in the middle settlements. The Puritans who wished to found a theocracy and democracy in the new world predominated in the northern colonies of New England. This class comprised some of the purest blood of the English yeomanry and lesser gentry; many of them were scholarly men educated in the great universities, especially in the institution on the banks of the Cam, whose name and history have been perpetuated in the prosperous city which has grown up around Harvard in the vicinity of Boston. These Puritan communities showed no liberality in matters of religion, and we who live in these times of wide tolerance of all religious opinions are too apt to blame them for the persecution of those who presumed to differ from them, forgetting that a true conception of their ideas and motives shows us that they never professed to establish a commonwealth on the basis of liberty of conscience. A high authority on such subjects, writing from an accurate knowledge of the history of the origin and development of New England, has said with truth, that "the aim of Winthrop and his friends in coming to Massachusetts was the construction of a theocratic state which should be to Christians, under the New Testament dispensation, all that the theocracy of Moses and Joshua and Samuel had been to the Jews in the Old Testament days." The state they were to found "was to consist of a united body of believers; citizenship itself was to be co-extensive with church membership; and in such a state there was, apparently, no more room for heretics than there was in Rome or Madrid."[1] But the Puritanism of New England, with all its intolerance and coldness, "meant truth and righteousness, obedience and purity, reverence and intelligence everywhere—in the family and in the field, in the shop and in the meeting-house, in the pulpit and on the bench."[2] Allied to these great qualities, there was among the Puritans a spirit of self-reliance and a capacity for self-government which enabled them to cope successfully with the difficulties of pioneer life, and to lay the foundation of the great commonwealths of the American republic.

In decided contrast with the Puritans of Boston, Plymouth, and New Haven and other towns of New England was the character of the population of the colony of Virginia, which had been the first permanently settled by British subjects in America. No religious motives entered into the settlement of that fair country, but its people were made up of men who ventured into the new world to improve their fortunes. Many of them belonged to the English gentry who still clung to the English Church. The fertile soil and genial climate of this colony invited agriculture on a large scale, and the result was, in the course of time, the establishment of what was, in a measure, an aristocratic class, famous for its hospitality, and exhibiting none of the asceticism and intolerance of the Puritan settlements who fought for wealth in maritime pursuits, or gathered a meagre subsistence among the rocks of New England. But throughout the colonies generally the tendency of things was unfavourable to the foundation of purely aristocratic institutions.[3] The current of thought and action in Virginia and Massachusetts was

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[1] Fiske, "The Beginnings of New England," pp. 144-146.

[2] Address of Bishop Potter before the New England Society, December 23, 1878.

[3] "There was an aristocracy in Massachusetts in 1775 as well as in Virginia. In the latter colony the aristocracy was the ruling class and upheld the cause of the colonists as against the Crown, while in the former the aristocracy shared its political rights with the great mass of the people, and, when called upon to take one side or the other, went to Nova Scotia."—Channing, "Town and County Government in the English Colonies of America," 'Johns Hopkins University Studies,' Second Series, X.

steadily in the direction of the establishment of a democracy, and the history of the independence of the old colonies shows that while "the shot that was heard round the world" was fired by "the embattled farmers" of puritan Lexington, the most eloquent voice that first hurled defiance at England was that of a son of Virginia in the Hall of Burgesses in the old Capitol of Williamsburg; and the general and statesman whom the people will ever hold in most grateful memory was also a native of the same noble commonwealth.

While the French king was ever interfering with the affairs of the colony, and suppressing every liberal attempt to give the people a semblance of local government, the thirteen colonies were left, for the most part, for many years perfectly free to pursue their own internal development. The old charter of Massachusetts was eventually revoked, and that colony became a partly royal government, resembling in essential respects the government of the majority of the colonies. The foreign trade of the country was subject to imperial regulations which fettered it in every possible way, as it was the custom in those days, with the view of making colonies as far as possible mere auxiliaries to European wealth and commerce. But practically, the old colonies were long free to manage their own affairs in their own way. In all of them, in the proprietary, as well as in the provincial or royal governments,[1] there existed representative organizations in which the people were able to discuss their affairs, and legislate on all subjects which properly fell within their jurisdiction. Some friction and difficulty arose at times from the interference of the governors who were appointed by the Crown and presided over the provincial or royal governments.[2] But when we survey the political situation throughout the colonies, we are struck by the fact of the large measure of local self-government enjoyed by the people generally, and the ability and capacity which they showed in the management of those questions intimately connected with their internal development. Although the Crown had the right of veto over all legislation, except in those colonies which were under proprietary governments, it was a right which was rarely, if ever, exercised. In all of the colonies there were legislative bodies, mostly of a bi-cameral character, and the holding of public meetings was a right constantly exercised, especially in New England. All the colonies were divided into local divisions known as counties, parishes and townships, for the performance of certain judicial and municipal functions, but it was only in

[1] The late Professor Johnston, in his article in the 'Encyclopædia Britannica' on the "United States," has correctly divided the colonial governments generally into charter, proprietary and royal (or provincial) governments. The charter governments originally were Massachusetts, Rhode Island and Connecticut, and were so named on account of having received charters from the Crown giving the people the right to elect their own governors and make their own laws. The Massachusetts charter was revoked in 1684 by a decision of the Crown judges, and a partly royal government practically established in 1691. A number of colonies were at first under great proprietors, who had a right, by their patents, to establish the government, but at the time of the revolution Maryland, Delaware and Pennsylvania alone belonged to this class. Virginia, New Hampshire, New York, New Jersey, North and South Carolina, and Georgia eventually became royal governments. In these colonies the Crown appointed the governors, and had a right to veto the legislation of the assemblies. Nova Scotia and other provinces of British North America belonged to this class.

[2] "The governors came over with high ideas of their own importance, and with not a little of the feudal spirit, which regarded the possessors of power as the holders of so much personal property that they might turn to their own private uses; while the assemblies were imbued with the spirit of the great idea that government is an agency or trust which was to be exercised for the common good."—Frothingham, "Rise of the Republic of the United States," p. 127. See also Moses, "Federal Government in Switzerland," pp. 10-12. See a speech of Sir James Craig, while governor of Canada, in which the same arrogant spirit of early governors was plainly exhibited, *infra*, p. 17.

New England we find the township and its primary assembly playing that important part which it played in the history of the Teutonic and English people. There local self-government obtained in a completeness which is without a parallel in the early history of any dependency of the British Crown.

The common law of England—one of the noblest heritages which England has given to her children—was in general use throughout the old colonies so far as it could be adapted to the new conditions and circumstances of the country. Real property was generally held in free and common socage, and only in the South was land entailed.[1] Although the effects of the feudalism that so long existed in England could be seen in many of the laws, and especially in the conveyance of real estate, there was no elaborate system of seigniorial tenure throughout the English colonies such as existed in French Canada down to very recent times. In Canada that system had been established at a very early date by Richelieu, with the twofold object of encouraging colonization and establishing a *noblesse* which would form a bulwark, in the course of time, against the mass of the people. The tenure was a modified copy of the old feudal system which had a deep foothold in France, although, even there, those features which were calculated to strengthen the power of the nobles, had long since been eliminated by the centralizing influence of the king. As a system of colonization, the seigniorial tenure had its advantages, since the seignior could only hold his estate on the condition of settling and cultivating certain portions of it within a fixed period. As a system under which a *noblesse* could be established—under which titles and dignities could grow up in the course of time—the seigniorial tenure was necessarily a failure in the country, since the rude conditions that surrounded settlement and necessarily brought the *seigneur*, or lord of the manor, and the *habitant*, or cultivator of the soil, into close contact, were not calculated to develop distinctions that grew up naturally under a very different state of society in Europe. In sections of the old English colonies there had been efforts to reproduce institutions, aristocratic in their tendencies. In the days when the Dutch owned the New Netherlands, vast estates were partitioned out to certain patroons who held their property on *quasi* feudal conditions, and might in essential respects be compared to the seigniors of French Canada.[2]

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[1] Story on the "Constitution of the United States," (Cooley's ed. of 1873) i., ss. 172, 173. In Virginia, both primogeniture and entails existed. See "Local Institutions in Virginia," by C. Ingle, 'J. H. U. Studies,' iii. 142. Land was held in the English speaking provinces in free and common socage, and in Lower Canada when the grantee required it. See Const. Act of 1791. As to primogeniture in Canada, etc., *infra* p. 29.

[2] In the Dutch manors or colonies under the proprietorships of patroons, established in 1629 by the Dutch West India Co., the colonists had no rights of self-government. These colonies were but "transcripts of the lordships and seigneuries so common at that period, and which the French were establishing, contemporaneously, in their possessions north of the New Netherlands, where most of the feudal appendages of high and low jurisdiction, mutation fines, pre-emption rights, exclusive monopolies of mines, minerals, water-courses, hunting, fishing, fowling and grinding, which we find enumerated in the charter to the patroons, form part of the civil law at the present time." O'Callaghan, from whose history of the New Netherlands I have here quoted, p. 120, published his work in 1846, or eight years before the abolition of the seigniorial tenure of Canada. "The manorial system established by the Dutch in New Netherland was perpetuated under English forms after the territory was conquered by the English and transformed into the colony of New York.... Under the English and Dutch manorial systems thus established in Maryland and New Netherland the proprietors or 'patroons' were nothing more nor less than feudal lords who were endowed with the right to exercise within their own domains all of the feudal incidents of tenure and jurisdiction. Thus did the dying feudalism of the old world attempt to strike its roots into the free soil of the new world as a permanent institution. The effort was of course short-lived. In spite of the oppressive seigniorial rights granted to the lord, the fact remained that the manor was a self-governing community."—Hannis Taylor, i. 34, 35.

For Carolina the philosopher Locke devised a fundamental constitution which was intended "to avoid erecting a numerous democracy." Provision was made for the creation of a nobility, with large territorial estates, and the high sounding titles of landgraves and caciques; but like other paper constitutions, which have not naturally grown out of the experience and necessities of a community, Locke's invention is now simply noteworthy as an historical curiosity. In the proprietary colony of Maryland—a famous colony, inasmuch as its Roman Catholic proprietors showed a remarkable spirit of religious tolerance and a comprehension of the true spirit of liberty in the colonization of the country[1]—the Calverts also attempted to establish a landed aristocracy, and give to the manorial lords rights of jurisdiction over their tenants drawn from the feudal experience of the parent state. It is shown on good authority that there were even manorial courts held occasionally on the manors of the colony, under the names of "Courts Baron" and "Courts Leet" which were essentially relics of English institutions, which feudalism had more or less influenced in the course of time. One of the features of the feudal system of Europe was the right of the lords of the feud to exercise judicial powers in the case of their tenants, and the seigniorial tenure of Canada reproduced this feature in a modified degree, although the power does not appear to have been ever exercised except in the case of petty disputes (*basse justice*).[2] One fact will strike the student of the feudal system of Canada when he compares it with the reproduction of English usages, such as the courts leet in Maryland. The manors of that colony were in a measure, self-governing communities, and there was a trial by jury in its courts. The popular court of the manor was the court leet, or court of the people. It could enact by-laws regulating the intercourse of residents with each other, and these regulations had all the force of a town ordinance.[3] So we see the spirit of English self-government asserting itself, even in those

[1] "While as yet there was no spot in Christendom where religious faith was free, and when even the Commons of England had openly declared against toleration, he [Calvert] founded a community wherein no man was to be molested for his faith. At a time when absolutism had struck down representative government in England, and it was doubtful if a parliament of freemen would ever meet again, he founded a community in which no laws were to be made without the consent of the freemen." "Maryland: The History of a Palatinate" 'American Commonwealth Series', p. 45. See also an able paper by Bradley T. Johnson, "On the Foundation of Maryland and the Origin of the Act concerning Religion of April 21, 1649," read before the Maryland Historical Society, 1883. The exercise of the Roman Catholic religion was also permitted in Penn's colony. It is a noteworthy fact that when the Puritans in later times gained the ascendancy in Maryland, they refused to extend liberty of conscience to "Popery, prelacy, or licentiousness of opinion," and made Roman Catholics pay double the tax levied on Protestants. See 'Edinburgh Review,' April, 1890, article on "The Catholic Democracy in America." Since those days of narrow sectarianism a great change has come over once puritan Massachusetts, and it is now the hot-bed of all new fangled beliefs and ideas, religious, social and even literary.

[2] Parkman, "The Old Regime in Canada," pp. 252, 269. The seigniorial court for the administration of middle and low justice, according to Lareau, "Histoire du Droit Canadien," i. 1261, resembled the court baron of England and Maryland, but it certainly lacked the essential feature of a jury. See following note. According to Mazères, "Papers on Quebec," p. 161, the seigniors never exercised high justice, although their patents gave most of them the right in general terms. But even Lareau does not suggest that there was in French Canada any institution resembling the courts leet of England; these were essentially among the forms of local freedom which had long since disappeared in old France.

[3] The old institutions of England were transplanted to Maryland and acclimatized. Lord Baltimore (Cecilius Calvert) modeled his colony after the palatinate of Durham, and the details of local administration were what they had been at home. The ownership of the manorial estate carried with it the right to hold two courts in which disputes could be decided and tenant titles established and recorded, and in which, also, residents on the estate exercised a limited legislative power. The popular court of the manor was the court leet or the court of the people;

institutions which bore the impress of feudalism. In Canada it could not exist because it had been crushed long since in France itself, under the influence of feudalism, when the nobility were all powerful within their respective jurisdictions, and it was finally lost under the centralizing, autocratic policy of the monarchy. In England the old institutions ever forced themselves above all efforts to repress them by the introduction of innovations.

As long as the thirteen colonies continued possessions of England they were always inclined to resent the least appearance of interference with what they considered to be their well established rights of self-government, and when the parliament of England attempted to impose internal taxes, on the assumption that it had the right to do so, as the supreme legislature of the country, the colonists at once asserted the English principles that taxation and representation must go together, and that the imposition of taxes without the consent of the people to be taxed was unconstitutional. Such an assertion of independence would have been impossible in a country like French Canada where representative institutions never existed, and where the people were entirely ignorant of even the most elementary principles of self-government. The consequence of the large measure of legislative authority enjoyed by the old colonies was that they were able without difficulty to carry on their affairs the moment they asserted their independence of England. The new constitutions which were adopted were the old colonial constitutions in a more democratic form, and, indeed, the charter colonies of Rhode Island and Connecticut did not find it necessary to make any changes immediately, the former, in fact, not until 1842. In Canada, on the contrary, with the removal of the French authorities there was practically no local machinery which could enable the people to carry on their affairs, and the military government which existed for three years from 1759 to 1763 was an actual necessity, apart altogether from military considerations. The ecclesiastical division of the parish was the only division of which the people had any conception, and the militia captain was the only functionary available for local purposes.[1]

So far, in this review, I have made only comparisons between the French and English systems as illustrated in the history of the French colony on the banks of the St. Lawrence, and of the old English colonies who won their independence of the Crown and entered on a career of prosperity and greatness, only equalled by the record of the nation from which they have sprung. In the second paper of this series, it will be my endeavour to make comparisons between the political institutions of Canada, as developed under British dominion, and those of the American republic developed under purely democratic conditions, though deriving their original strength from the experience of the parent state. But, at present, I shall attempt to show you that from the time French Canada became a portion of the British Empire, and was able to throw aside the political

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the duties of a leet jury seem to have been those of both grand and petit juries. The court leet could enact by-laws regulating the intercourse of residents with one another. It appears to have been a kind of popular police court for a town or parish; it was the common people sitting in judgment upon itself, and was a judicial survival of the primitive tun-gemot or town meeting of the Saxon tithing. In the court baron of the freeholders, the freehold tenants acted as both jury and judges, and a freeholder could be tried only before his peers.—See Johnson, "Old Maryland Manors" in 'J. H. U. Studies,' vol. i. Also Howard, "Local Constitutional History of United States," pp. 25-31. The patent establishing the Livingston manor in New York provided for a court leet and a court baron.—Hannis Taylor, i. 34-35.

[1] For a statement of the important functions performed by the militia captain, see Lareau, i. 263. Also Bourinot, "Local Government in Canada," in 'J. H. U. Studies,' v. 192, 201.

system under which it drew, at the best, only a sluggish existence for a century and a half, the ideas of its best men enlarged, and the people were able to enjoy an amount of political liberty which would have seemed a dream to the men who toiled courageously to found a new France in America, on conditions generally antagonistic to rapid settlement and free development. At times in the history of Canada there has been a decided antagonism between the French Canadian and the English Canadian peoples, but happily it has always, sooner or later, given place to wiser counsels of compromise and conciliation, and the two races have been energetic and earnest co-workers in the development of the noble heritage which they possess on the northern half of the continent. The history of Canada, as a French colony, which ended in 1759, was a record of autocratic government which gave no opportunity to the expansion of Canadian intellect; the history of the province as an English dependency has been the record of a people working out their political destiny on the well understood principles of that wonderful system of government which the experience of centuries teaches us is admirably calculated to develop individualism, and a spirit of self-assertion and self-reliance, and to enable a people to solve successfully those great social and political problems on which rests the happiness of mankind.

The history of the Dominion of Canada as a self-governing community commenced really with the concession of representative and legislative institutions to the several provinces which are now comprised within its limits. By 1792 there were provincial governments established throughout British North America, including French Canada. Nova Scotia, and Prince Edward Island were provincial or royal governments possessing legislative and representative institutions, resembling in the main, the old institutions of the thirteen colonies, then independent states. New Brunswick had been finally separated from Nova Scotia in 1784, but a representative assembly did not meet until 1786. These provinces at no time possessed constitutions under the authority of parliament, but received their rights and privileges from the Crown in the shape of commissions and instructions to the several governors. In 1791 the province of Upper Canada, which had been founded by the United Empire Loyalists, was formally separated from the province of Quebec by an Act of the imperial parliament,[1] and the first legislature assembled in the early autumn in the humble village of Newark, picturesquely situated on the banks of the Niagara. The French province then received the name of Lower Canada, and its first assembly met towards the close of the same year in the old stone building, known as the Bishop's palace in the city of Quebec. At that time there was, throughout all British North America, a small population which did not exceed two hundred and fifty thousand souls, of whom the greater proportion lived on the banks of the St. Lawrence and its tributary streams, and represented the language, institutions, and history of the French *régime*. In the maritime provinces of Nova Scotia, New Brunswick and Prince Edward Island, there was a small French Acadian population still living in favoured localities, a remnant for the most part, of the unhappy people who had been expatriated from the beautiful meadows of Grand Pré, and the valley of the Annapolis. But the population of this province was mostly made up of the settlers who came into the country after the foundation of Halifax by Cornwallis in 1749, and of a large number of loyal refugees,

[1] Imp. Act, 31 Geo. III., c. 31.

chiefly from the old colonies of Massachusetts, New York and Virginia. New Brunswick was settled originally by the same class of people. In the French province there was also a small English population, consisting chiefly of officials, commercial men, and of a number of loyalists and others who settled in the Eastern Townships. The large proportion of settlers in the new province of Upper Canada, which extended indefinitely, from the river Ottawa as far as the head of Lake Superior, consisted also of men who had left their homes in the old colonies for the sake of king and country.[1] Beyond that country lay an immense region of wilderness which was the abode of the Indians and the servants of fur traders only, and was to remain almost unknown until the provinces of British North America joined in a confederation which now exercises a dominion from ocean to ocean.

When we come to survey the past history of Canada we can see that there has been, for a century at least, that continuity of development which has always been a characteristic feature of the political development of England herself. The times which have seemed darkest in the people's history have but preceded the dawn of a brighter epoch. Politicians at home and abroad have attempted in vain to stop the current of political progress. When France left her old colony to its destiny under the rule of England, its people saw only the rude severance of the ties which bound them to the country of their affection, and recognized in England only a land with which they and their ancestors had been more or less in conflict in the course of centuries. But what seemed to them the greatest possible misfortune that could befall a people was, in the end, a national blessing in disguise. From decade to decade there has been an expansion of political privileges and fresh guarantees for the security of their civil and religious institutions, which have given strength and encouragement to the French Canadian and made him an Englishman, from the point of view of constitutional development. No parliament of England in its contests with royal prerogative contended more energetically for the rights of a people's house than did the assembly of French Canada from 1792 to 1836. No doubt their persistence in their claims to additional privileges would have induced the British government, sooner or later, to bring about some change which would meet their wishes, but so desirable a result was too long delayed, with the consequence, that some indiscreet leaders of the popular movement precipitated a rebellion on the province, and its fortunes seemed at the very lowest ebb. The Act of 1841[2] which re-united the two provinces was, in a great measure, an acknowledgment, on the part of British statesmen that a political error had been made in giving, half a century before, a distinct form of government to French Canada, and consequently, special facilities for perpetuating its language and institutions. But the spirit of self-reliance and the capacity for self-government which had been developed by the concession of representative institutions eventually placed the French Canadian in a position to control governments and parties, and instead of his influence being diminished by the union of 1841, it was actually increased, until at last his attitude of steady resistance to the onslaughts of western politicians on his institutions, and to their efforts to change the equality of repre-

[1] See Winsor, "Critical and Narrative History of America," (vols. vi. and viii.), in which appears a carefully prepared history of the emigration and character of the loyalists, very interesting to the people who now inhabit the countries which that class did so much to develop.

[2] Imp. Act, 3 and 4 Vict., c. 35.

sentation given the two provinces by the Act of 1840,[1] was among the causes that brought about the great political change in the situation of all the provinces of British North America, which gave him a vantage ground he could never have hoped for a quarter of a century before. The confederation of the provinces restored him to the position of which the Act of 1840 in a measure deprived him, and enabled him to surround his special institutions with additional guarantees of protection and security.

During the period of political evolution which went on from the establishment of representative institutions down to the passage of confederation and the formation of a Dominion covering half a continent, the political student will see how history must repeat itself under analogous conditions of national and popular struggle. In all the provinces, according as the defects of the legislative system granted by England to her colonies showed themselves in its operation, there was a persistent contest between the popular assemblies and prerogative, as represented by the governors and upper houses appointed by the same authority. Charles the First, with all his arrogance, never treated his parliament with greater superciliousness than did Sir James Craig, when governor-general, on more than one occasion when the assembly had crossed his wishes. With the choleric impetuosity of a man more accustomed to the camp than to the council he told the assembly of Lower Canada that they had "wasted in fruitless debates, excited by private and personal animosity, or by frivolous contests upon trivial matters of form, that time and those talents to which, within your walls, the public have an exclusive title.....So much of intemperate heat has been exhibited in all your proceedings, and you have shown such a prolonged and disrespectful attention to matters submitted to your consideration, by the other branches of the legislature, that, whatever might be the forbearance and moderation exercised on their part, a general good understanding is scarcely to be looked for without a new assembly."[2] Such language could not be used under the present system since the governor-general only speaks on the advice of his official advisers, but in the old times, in the absence of a ministry responsible to the assembly, a conflict was always going on between that body and the representative of the Crown. But this was not the only cause of irritation that led, at last, to demonstrations of popular disaffection. The assembly claimed full control over the taxes and revenues which belonged to the people of the provinces,—an assertion of right fully justified by the experience of the working of representative institutions in England. The presence of judges in the legislature was a just cause for public discontent for years, and although these high functionaries were at last removed from the assembly, they continued to sit in the upper house until 1840. The constant interference of the imperial government in matters of purely local concern led to many unfortunate misunderstandings, chiefly owing to the misrepresentations of the official class, and the inability of some inexperienced governors to understand the necessities of the provinces and sound principles of local self-government. As in all similar conflicts between prerogative and people—as happened in England during the seventeenth century—the people won at last; and it is one of the most memorable achievements of Lord Durham and of Lord Russell that they were among the first of English statesmen to appreciate the wants and necessities of the colonies and lay down general principles which led to the complete recognition, eventually, of the system

[1] See Bourinot, "Manual of the Constitutional History of Canada," pp. 49, 52.

[2] Christie, "History of Lower Canada," i. 282-286.

of responsible government which Canada now possesses.[1] As we look back for the one hundred and thirty years that have passed since the concession of Canada to England we can see that the political development of the provinces now constituting the Dominion is owing to the passage of certain measures and the acknowledgment of certain principles which stand out as so many political milestones in the path of national progress. Briefly summed up, these measures and principles are as follows:—

The establishment, at an early period of Canadian history, of the principle of religious toleration, which relieved Roman Catholics of disabilities which long afterwards existed in Great Britain.[2]

The establishment of trial by jury and the right of every subject to the protection of the writ of habeas corpus.[3]

The guarantees given to the French Canadians for the preservation of their civil law and language.[4]

The adoption of one system of criminal law in French and in English Canada.[5]

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[1] See Lord Durham's "Report," p. 106. Responsible government was not established in a complete sense in Canada until after the arrival of Lord Elgin in 1847. By 1848 it was in full operation in all the provinces of British North America, except Prince Edward Island, where it was only established in 1850-51.—Bourinot's "Manual," pp. 36-40, 100. British Columbia did not receive it until after the union with Canada in 1871.—*Ibid*, 102. Sir Gavan Duffy in an article in the 'Contemporary Review,' May, 1890, shows how reluctant the imperial authorities were for years to grant the concession, but he does not do sufficient justice to Lord John Russell, in this particular. No doubt there was too much hesitancy on the part of English ministries to grant responsible government, but it is partly explained by the fact that "at first ministers at home were apprehensive lest the application of the principle to a dependency should lead to a virtual renunciation of control by the mother country." May, "Constitutional History," II. 533. Lord Melbourne, as his recently published correspondence shows, was quite indifferent to the matter, and it was left to Lord John Russell to carry out the policy laid down in the report, to which Lord Durham's name is appended, but of which the actual author was the astute Charles Buller. See 'Edinburgh Review,' April, 1890, "Lord Melbourne's Papers." It is an interesting fact, also to be placed to Lord Russell's credit, that he was the premier of the ministry that appointed Lord Elgin, and gave a complete recognition of responsible government in the provinces of British North America. It was a fortunate thing for Canada that an able and sagacious governor like Lord Elgin was entrusted with the power to follow Earl Grey's wise dictum that "it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinion of the colonists."

[2] The Quebec Act of 1774 was the real charter of the religious liberty of the French Canadians; to it all other acts have been only the necessary and logical corollaries. See Bourinot's "Manual," pp. 12-16.

[3] The Canadian ordinance of 1785 (25 George III, chap. 2) regulating procedure in courts of justice, established trial by jury in matters of commerce and of personal wrongs, and the English forms with respect to proof in certain cases.—Lareau, i. 326. Of course trial by jury formed part of the criminal law after the cession, and the king instructed General Murray to pass an ordinance to permit French as well as English to sit as jurymen.—*Ibid*, 96-97. As to civil matters the Code of Procedure now fixes in what cases a trial by jury is allowable.—*Ibid*, 413, *et seq*. The law of habeas corpus (31 Charles II, c. 2) necessarily made part of the English criminal law when introduced into Canada, but the French Canadians were not content until they had a provincial law passed "pour la sûreté de la liberté du sujet dans la province de Québec et pour empêcher les emprisonnements hors de cette province."—(Ordinance of 29 April, 1784; 24 George III, c. 6). The Constitutional Act of 1791 continued this ordinance in force.

[4] Previous to 1774 there was great uncertainty as to the laws that should prevail in Canada. The Quebec Act established the civil law permanently.—Bourinot's "Manual," ii. 15. Attorney-General Thurlow ably and judiciously argued that by a fair interpretation of the law of nations, and of those principles of justice that should govern the relations of a conqueror with a conquered people, the French Canadians had a right to the continuance of their old laws.—Christie, "History of Lower Canada," i. 46-61.

[5] Canada was subject to the criminal law of England since the king's proclamation of 1763, but it was permanently established by the Quebec Act of 1774. The French Canadians always accepted its provisions as more humane than their old criminal code.—Lareau, i. 301.

The establishment of representative institutions in every province of Canada.

The independence of the judiciary and its complete isolation from political conflict.

Full provincial control over all local revenues and expenditures.[1]

The initiation of money grants in the people's house.[2]

The right of Canadian legislatures to manage their purely local affairs without any interference on the part of English officials in the parent state.

The establishment of municipal institutions and the consequent increase of public spirit in all the local divisions.[3]

The abolition of the seigniorial tenure and the removal of feudal restrictions antagonistic to the conditions of settlement in a new country.[4]

The adoption of the English principle of responsibility to the legislature, under which a ministry can only retain office while they have the confidence of the people's representatives.[5]

All these valuable privileges were not won in a day but were the results of the struggles of the people of Canada up to the time of the establishment of the federal union which united the provinces on the basis of a central government, having control of all matters of general or national import, and of several provinces having jurisdiction over such matters of provincial and local concern as are necessary to their existence as distinct political entities within a federation. At the present time the Dominion of Canada may be considered subject to the following authorities :—

The queen as the head of the executive authority.

The imperial parliament.

The judicial committee of the privy council as the court of last resource for the whole empire.

The government of the Dominion, consisting of a governor-general, a privy council and a parliament.

The governments of the provinces, consisting of a lieutenant-governor, an executive council, and a legislature, generally of a bi-cameral character.

The courts of law, which can adjudicate on all questions depending on the construction of the written constitution.

The British North America Act of 1867,[6] or Constitution, under which Canada is

[1] Bourinot's "Manual," pp. 45-46. The Union Act of 1840 was the great charter of colonial freedom under which Canada gradually obtained complete control over its tariffs and revenues. The other provinces obtained similar rights between 1840 and 1860.—See Gray, "Confederation," chap. x.

[2] In the old legislatures of Canada, previous to 1840, all applications for pecuniary assistance were addressed directly to the House of Assembly, and several governors, especially Lord Sydenham, have given their testimony to the injurious effects of the system. The Union Act of 1840 placed the initiation of money votes in the governor, and the British North America Act of 1867 continued the rule.—Bourinot, "Parliamentary Practice in Canada," p. 463.

[3] See Bourinot's "Local Government in Canada," 'J. H. U. Studies,' vii. or 'Royal Society of Canada Transactions,' vol. IV. The Canadian Act of 1845 is the basis of the municipal institutions of Canada. All the provinces have practically followed the system of the province of Ontario.

[4] In 1854. See Bourinot's "Manual," p. 43.

[5] See *supra*, p. 18, note 1.

[6] The British North America Act (Imp. Act, 30 and 31 Vict., c. 3, amended by 34 and 35 Vict., c. 28, and 38 and 39 Vict., c. 38), which received the assent of the queen on the 29th of March, 1867, and came into force by royal proclamation on the first of July in the same year, gave a constitutional existence to the Dominion of Canada, which at the time comprised only the four provinces of Quebec and Ontario—previously known as Upper and Lower Canada—and of Nova Scotia and New Brunswick. In the course of the succeeding six years the provinces of British Columbia (Can. Stat., 1873, p. 9) and Prince Edward Island (*ibid*, 1872, p. 84) were added to the union,

now governed, is the emanation of the united wisdom of the Canadian statesmen who met in Quebec in the autumn of 1864, but derives its sanction as a law from the consent of the queen, lords and commons,—the supreme legislature of the empire. It defines the respective authorities in the Dominion and in the provinces, distributes the various subjects of legislation among those authorities, regulates the general administration of public affairs, and establishes a financial basis for the provinces. In all essential features necessary for the administration of public affairs the government of Canada is conducted on the well understood principles of that remarkable system of charters, statutes, conventions and usages, to which the general name of the British constitution is given. Exception has been taken by an eminent constitutional writer to the statement in the preamble of the British North America Act that the provinces "have expressed their desire to be united into one Dominion with a constitution similar in principle to that of the United Kingdom." Professor Dicey states his opinion,[1] in very emphatic terms, that the word "states" should have been substituted for "kingdom," since it is "quite clear that the constitution of the Dominion is modeled on that of the United States;" but this distinguished and generally astute writer, has failed to appreciate, to its full extent, the character of the government of the Dominion. It is true that the basis of the confederation necessarily rests on principles akin to those of the great union, which is the most remarkable illustration of the federal principle that the world has ever seen. We might even call upon Mr. Dicey to study Mr. Bryce's able work on the American Commonwealth, in which he will find more clearly shown, than has been heretofore done by any other writer, that the government of the union and of the states themselves is based on the great principles of the constitutional system and the common law of England, modified to suit the changed conditions and circumstances of a democracy.[2] As a matter of fact, Canadians have adhered closely to the great principles that give, at once, strength and elasticity to the English constitution. The written constitutional law itself contains indubitable evidence of the truth of the preamble to which exception has been taken. We see this clearly in the nature of the executive authority, in the constitutions of the parliament and legislative bodies, especially of the lower houses, and in the formation of the privy council. But in addition to the written fundamental law we have that great mass of English conventions, understandings and precedents, which, although they may not be pleaded in the courts, have, practically, as much force in Canada as the written or statutory law.[3]

Against the opinion of Mr. Dicey we may cite that of the most distinguished student of constitutions from the historical point of view, to whom we owe the coining of that phrase applied to the new science, so much studied in these days, known as Comparative Politics. Professor Freeman has very truly said, in a review of the constitution of the Dominion, that "Canada, very far from purely English in blood or speech, is pre-

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and a new province under the name of Manitoba (*ibid*, 33 Vict., c. 3) carved out of the vast North-West Territory, which was formally transferred to the Dominion by an imperial order in council, after the purchase of the rights of the Hudson's Bay Company, which had held trading privileges over that vast region by virtue of charters from the Stuart kings. This vast region is now divided into five provisional districts for the purposes of government known as Keewatin, Assiniboia, Alberta, Saskatchewan and Athabasca. (Imp. Stat. 31 and 32 Vict., c. 105; *ib.* 34 and 35 Vict., c. 28; Imp. Orders in Council, 1870 and 1880; Bourinot's "Manual," pp. 58-60, 105).

[1] "The Law of the Constitution" (3rd ed.), pp. 155, 156.

[2] See second paper of this series.

[3] See Bourinot, "Federal Government in Canada," pp. 33-35.

eminently English in the development of its political institutions." He recognizes the fact "that there is a distinct and visible element which is not English—an element which is older than anything else in the land and which shows no sign of being likely to be assimilated by anything English; but with this marked exception, or something more than an exception to the English character of Canada, the political constitution of Canada is yet more English than that of the United States."[1] While there is a distinct element in Canada which is not English, it is assuredly the influence and operation of English institutions which have, in a large measure, made French Canada one of the most contented communities in the world. The language and law and religion of Rome still remain in all their old influence in the province, but it is, after all, the political constitution which derives its strength from English principles that has made this section of Canada a free and self-governing community, and given full scope to its civil and local rights. In its political development French Canada has been, and is, as essentially English as the purely English sections of the Dominion.

When we review the political and the judicial system of the Dominion we can see that there are certain broad principles which, above all others, illustrate in their practical operation the "pre-eminently English" character of our institutions, and which may be briefly summarised as follows:—

The Supremacy of the Law.—The people of Canada are all equal in the eyes of the law, and for every breach of that law the courts are open to the state as well as to individuals. The old saying is eminently true of Canada—the law is no respecter of persons, and the highest functionary as well as the humblest individual equally enjoy free speech and all the liberties of British subjects, but they must act strictly within the law. The governor-general himself can freely exercise that discretionary power which he possesses as the head of the executive, and is guided and limited by well understood rules in the exercise of his political prerogatives. In the discharge of these discretionary and political functions he is, generally speaking, free from the control of the courts. But, exalted as is his position, if he should violate the law, even under the advice of a

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[1] Professor Freeman's remarks on this point are so suggestive that I cite them here in full, especially since they have not appeared in any edition of his well-known works:—"It is not wonderful that the attention of political students, both in Great Britain and in the United States, should be largely drawn to the third development of English political life which lies between the two. For Canada, very far from purely English in blood or speech, is pre-eminently English in the development of its political institutions. The phenomena of Canada at once supply an answer to the cavils which one sometimes hears on both sides of the ocean against the truth of the still essentially English character of the independent colonies of England. These colonies, strictly English in their origin, have annexed possessions of the united provinces of Sweden, of France, and of Spanish-speaking Mexico. Settlers from various European nations have found a home among them; there are districts in the United States where more German is heard than English; and the law declares the African enfranchised under President Lincoln's proclamation to be as good a citizen as the direct descendant of the first settler in Virginia or at Plymouth. In this last case indeed nature has proved herself too strong for law. The European settlers meanwhile, important as they are, are gradually assimilated into the greater English mass. It is in several states found expedient for the law to recognize here the language of German immigration, the language of the earlier French or Spanish settlers, as a secondary legal tongue; there are districts in which more German is heard than English; but there is no state which can be called primarily German, French or Spanish. The law of England is the groundwork of the law of every state, save where the eternal law of Rome has been beforehand with it. So, we may say, it is in Canada also; only the French element in the Province of Quebec, no remnant, but a living and advancing thing, is quite another matter from the French survival in Louisiana. In Canada there is a distinct and visible element which is not English, an element which is older than anything English in the land, and which shows no sign of being likely to be assimilated by anything English. But, with this marked exception, or something more than an

minister, his conduct may be brought under the purview of the courts, as in the case of the most ordinary individuals in the land.[1] The law is the governing principle of the state. The writ of *habeas corpus*—a principle of common law, given additional force and sanction by statute—has existed in Canada for a century and more, and any man who thinks he has been arrested and confined without due authority of law has always his remedy in this safeguard of individual freedom. Even in the case of persons who are subject to extradition under British treaties with foreign powers applying to Canada a person under arrest can avail himself of this writ and bring himself before the courts to test the regularity of his arrest. There does not exist in Canada, not in French Canada even, that system of administrative law (*droit administratif*)[2] which makes all officials of the state, and in fact all persons who have business or connection with the administration, independent of the jurisdiction of the ordinary courts, and provides them with a resort to special official tribunals not open to cases of dealings between private individuals. No doubt this exceptional system of law had its origin in the times when the Crown in France and in other parts of Europe began to exercise arbitrary power and to conduct all the affairs of state; and we can see in the claims of prerogative by the Stuart kings the assertion of a principle which is decidedly antagonistic to the spirit of individual liberty and to that supremacy of the law which has ever been a fundamental doctrine of English government.

The Influence of the Common Law.—In the years that preceded the passage of the Quebec Act in 1774, there was great dissatisfaction in French Canada owing to the uncertain state of the laws. The French, or "new subjects," claimed with justice that they were entitled to the laws to which they had been always accustomed, while the English, or "old subjects," contended that the English law should prevail. It was decided, in consonance with the spirit of justice and the principles of public law applicable to such cases,[1] that the civil law of Canada, which was based on the *coutume de Paris*, should continue in force in the French province while the criminal law of England was accepted from the

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exception, to the English character of Canada, the political constitution of Canada is yet more English than that of the United States; indeed, both the federal constitution and the constitutions of the several states are as English as they well could be under the circumstances, but the circumstances of Canada allowed a much closer following of English models. And that, not because Canada is a dependency of Great Britain, not because its constitution was enacted by the parliament of Great Britain, but for a simpler reason, that Canada has not a president or a council, but a queen for its head. And the fact that Canada has a queen for its head in no way hinders the practically republican working of the Canadian system. Where there is any occasional hindrance of that working, it comes, not from the fact of the royal head, but from the fact of the dependent relation. That relation involves occasional reference to a power out of the country. But this has nothing to do with forms of government; it would be equally so if the constitution of the superior power were republican. Subject to this necessary condition of dependence, Canada possesses in its fulness that characteristic feature—some think it that characteristic advantage—of constitutional monarchy that the actual ruler can be got rid of at any moment or kept for any length of time. The practice of the mother country could be transferred whole to the colony, because the colony remained part of the dominions of the same sovereign as the mother country. The United States, by the necessity of their position, were driven to the system of a chief magistrate chosen for a definite time, and who cannot be kept on beyond that time without a formal act." This extract is from a review in the 'Manchester Guardian' (Jan. 2, 1890), of a work by the author of this paper and of one by Professor Munro of Owens' College.

[1] Hearn, "Government of England," p. 133; Dicey, p. 181.

[2] For an admirable exposition, in a brief compass, of this special class of law, peculiar to France and some other continental nations, see Dicey's "Law of the Constitution," chap. xii. But while there is not in Canada such a legal system, there is an Exchequer Court for the adjudication of claims against the Crown, but it practically gives an additional guarantee to the rights of the private individual, in case of disputes with the government, and affords no exclusive privileges to public officials.

beginning and consequently prevailed throughout British North America. From that time to this the civil law, modified in certain respects to suit a new state of things, has remained the law of French Canada. Outside of the French province, however, that great system of customs and judicial decisions, which received its legal sanction from immemorial usage and universal reception, and is generally known as the common law, has always obtained in the English-speaking provinces. In Canada, as in the old colonies of America, wherever there is an English community, it was brought with the people as one of their most valuable inheritances, although at no time did they accept it in its entirety, but only such parts as were adapted to the conditions of a new country. Modified or enlarged from time to time by statutory law, relieved, as far as possible, from the im press of feudal times, it has always been the basis of the jurisprudence of English Canada, and has made its influence felt even in the French province, since its great principles of individual liberty and practical political sagacity are so closely interwoven with the public life of the country. The civil law commends itself to us for its logical precision and arrangement, but the great system of law from which it is derived is far from being so well adapted to develop individuality of character or give so much scope for the play of political forces. A high authority has said with much truth, that, on the whole, the common law system of England "was the best foundation on which to erect an enduring structure of civil liberty which the world has ever known." It is the peculiar excellence of this law "that it recognizes the worth, and ought especially to protect the rights and privileges of the individual man." Its maxims are "those of a sturdy and independent race, accustomed, in an unusual degree, to freedom of thought and action, and to a share in the administration of public affairs; and arbitrary power and uncontrolled authority were not recognized in its principles." [1]

The Independence of the Judges.—It is a fundamental principle of the Canadian system of government, based as it is on that of England, that the judges should be, as far as possible, independent of the Crown, and of all political influence. The Canadian judges hold their tenure "during good behaviour," the legal effect of which is, practically, "the creation of an estate for life in the office." [2] Under the terms of the British North America Act the judges of all the courts of Canada, except the judges of probate in the small provinces, are appointed by the governor-general acting under the advice of his council, and are removable only on the address of the two houses—an exception being made in the case of the county court judges, who can be removed for sufficient cause by the governor-in-council. [3] The salaries of the judges, also, are not voted annually, as in the case of the majority of public officials, but are paid under the authority of statutes. In the case of the salaries of the supreme court judges of Canada—a body federal in its character—the parliament of Canada exercises a control which is very wisely not entrusted to congress, inasmuch as it is a provision of the United States constitution that the salaries of the judges of the supreme and inferior courts shall not be diminished during their tenure of office. In all essential respects, however, the parliament of Canada can regulate the judicial powers of the supreme court, but in the case of the courts of the provinces they are practically beyond federal jurisdiction, inasmuch as the administration of justice in the

[1] Cooley, "Constitutional Limitations," p. 30.

[2] Todd, "Parliamentary Government in England," II. 857.

[3] Bourinot's "Manual," p. 172.

provinces, including the constitution and organization of the provincial courts, both of civil and criminal jurisdiction, and including the procedure in civil matters in those courts, forms a class of subjects placed by the fundamental law within the exclusive control of the provincial authorities. The courts of Canada possess powers which are not possessed by the courts of England. The parliament of England is a constituent and sovereign body, and its power to pass any act cannot be called into question or its wisdom or policy doubted in any court of the realm. The judge cannot even speculate on the intention of the legislature or construe an act according to his notions of what ought to have been enacted. [1] "The power and jurisdiction of parliament," says Sir Edward Coke, "is so transcendent and absolute, that it cannot be confined, either for persons or causes, within any bounds." And again "it hath sovereign and uncontrolled authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal; this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of the kingdoms." [2] On the other hand the Canadian courts, like those of the United States, where there are written constitutions, can exercise responsibilities which place them above the legislature, since they may limit the legislative power by declaring to be null and void any enactment which is not in accordance with the express or implied authority of the constitutional or fundamental law which defines the jurisdiction of the respective legislative bodies of the Dominion. In the generality of cases the courts of Canada only exercise this judicial power in the natural process of law; in other words, in cases the decision of which depends on the interpretation to be put on the language of the constitutional law applicable to those cases. The scope of the constitutional authority of the courts has been, however, enlarged by the power given from time to time to the supreme court of Canada to state their opinion on a question involving nice and intricate points of constitutional law [3] and also by the passage of an act in 1890 [4] by the Ontario legislature giving the highest courts of that province the right to decide on constitutional controversies after due argument on behalf of the parties interested. When we come to consider that, in addition to these responsibilities, the courts of Canada can exclusively try cases of controverted elections—a power, previous to 1874, only exercised by the political bodies of the Dominion, and not even now possessed by the courts of the United States—it must be evident how great an influence the judiciary exercises in the practical working of the Canadian system of government, and how necessary it is that it should be surrounded by all the checks and guards that have been developed in the working of the judicial system of England. Any federal system like that of Canada must, in a great measure, gather its real strength from the decisions of the courts which are called upon,

[1] Maxwell on Statutes, 6-7.

[2] Coke, 4 Inst. 36. "The solutions arrived at seem to show that where the language of the legislature is plain and unambiguous, no considerations of convenience or public policy can influence the court to affix to it a meaning different from its literal and ordinary sense. 'The acts are the law of the land, and we [the judges] do not sit as a court of appeal from parliament. We have no authority to act as regents over parliament or to refuse to obey a statute because of its rigour.' Our judges always strive to keep within the spirit if not within the precise words and literal meaning of an act of parliament." Broom's "Philosophy of Law" (New York ed.) 19-20.

[3] Bourinot, "Federal Government in Canada," 'J. H. U. Studies,' 66, 67.

[4] Ont. Stat. 53 Vict, c. 13. See also Ont. Rev. Stat., c. 44, sub. s. 2 of s. 52, & s. 55.

from time to time, to adjudicate on the many questions that arise with respect to the rights and powers of the several provinces which have entered into, what may be considered, a solemn treaty to which the imperial parliament, as the supreme legislative authority of the empire, has given its authoritative legal sanction. Accordingly the security of the federal union largely rests on the legal acumen and independence of the courts.

The Controlling Power of the Commons' Houses.—When the early constitutions of the Canadian provinces were organized, it was expressly stated by the highest authorities that the object was to assimilate them to the constitution of Great Britain as nearly as the differences arising from the manners of the people and the circumstances of the country would permit.[1] Accordingly in the latter part of the eighteenth century we see in complete operation a system of government constituted as follows:—

The Crown represented by a governor-general in Lower Canada, and lieutenant-governors in the other provinces.

A legislative council nominated by the Crown.

An assembly elected by the people on a franchise, generally the old English forty shillings freehold.[2]

In Canada, as in Great Britain, the old battle for power was fought between the representatives of the people and the body under the direct influence of the Crown, and owing no direct responsibility to the people. It was clearly the hope of the imperial government to found in this country an aristocratic body, which, by the permanent tenure of its members, and the nature of its constitution, would bear such analogies as would be possible in a new country to the great House which is the true descendant of the Witenagemot.[3] In the Canadian constitution of 1791 titles were to be connected with seats in the legislative council, obviously with the view of establishing a body of hereditary legislators, who would probably form a counterpoise to the necessarily democratic character of the people's house. Such efforts to found purely aristocratic institutions were a failure from the outset. The upper houses of the provinces have always contained a number of distinguished men in every pursuit of life, but from the very nature of their constitution they have been exceedingly weak as political bodies. Before the days of responsible government they became associated in the public mind with the tyranny of executive authority, and were regarded as antagonistic to every movement or measure connected

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[1] Despatch of Lord Grenville to Lord Dorchester, 20th Oct., 1789; Christie ii. 16-26, app. See also speech of Lieutenant-Governor Simcoe to Upper Canadian Legislature, 1792, Read's "Life and Times of General Simcoe," pp. 149-152.

[2] "In 1430, (8 Henry VI,) was passed a very remarkable measure—the first disfranchising measure on record—by which the qualification of county electors was restricted to freeholders, and of them to such only 'as have free land or tenement to the value of forty shillings by the year at least above all such charges.'. . . Allowing for the change in the value of money, this was equivalent to a real property qualification of from thirty to forty pounds annual value, and must have disfranchised not merely all landless freemen, but a very large number of the smaller freeholders." Taswell-Langmead, "Constitutional History," 3rd ed., pp. 344-345. In Massachusetts and the old English colonies a similar freehold test was long in vogue. 'American Cyclopædia of Political Science,' Art. "Suffrage," p. 824. Now in the United States universal suffrage generally prevails, and is even advancing in Canada—Ontario and other provinces having already adopted it, while the dominion suffrage is on the very verge of the same principle.

[3] Freeman, "Growth of the English Constitution," p. 64.

with popular liberty or in accordance with the people's will. There could be only one result to a contest between the two bodies, the one representing the people and the other the good favour of the Crown, or of the government of the day. The issue was inevitable in this country as it had been in England, where, even in the case of a house associated with the history of the country from the earliest times, and containing within its ranks men of the highest capacity, and having all the privileges of a body of hereditary legislators, its powers steadily declined, according as that of the lower house increased. With the introduction of the English system of parliamentary government in its entirety, the influence of the upper houses waned and the people's assembly grew in strength and vigor. Now, in the central, and in the provincial governments, all substantial power rests in the Commons' house of the respective legislatures. It controls the public expenditures, exercises a direct supervision over the administration of public affairs, and, through a committee of its own, governs the country.

The Principle of Ministerial Responsibility.—From the earliest times of English history, even when the framework of English government was being roughly laid, there was always around the king a body of official advisers whom he could consult at his pleasure, and who, in the course of time, became responsible for his executive acts. It was not, however, until after the great revolution, about two centuries ago, that the present principle of parliamentary government, which requires a government to be of one political party, and act in conformity with the views of the majority in the Commons, was practically laid down. In Canada only within half a century has this English system of cabinet government obtained full recognition; and now throughout the British empire, wherever there are self-governing countries, we find ministries having seats in the two houses—principally in the Commons' house, where the legislature is of a bi-cameral character—and only holding office as long as they retain the confidence of a majority of the people's representatives. It is this system which gives its great strength to the lower or elective house and, in a measure, invests it with executive responsibilities since it governs through its own members

The Permanent Tenure of the Civil Service.—In every country where the people govern through their representatives in parliament, and where political conflict is necessarily carried to extremes in all important crises involving the fate of governments, it is absolutely necessary that there should be in existence an efficient and permanent organization to conduct the details of public administration, whatever may be the fluctuations of party controversy. The evils of a system which requires the great majority of public servants to retire with a change of party, can be seen throughout the political history of the United States for many years past, until at length there is a growing consensus of public opinion, outside of the mere party machine, that permanency should be the ruling principle henceforth. Canada has long been governed in accordance with the sound British principle which places at the head of the government a permanent executive authority, in the person of the sovereign, and at the basis of the political structure a great body of public officials who hold their tenure, in administrative phrase, "at pleasure," but in practice during "good behaviour." Ministers discuss and decide questions of policy, which they submit for the approval of parliament, and it is for the permanent officers of each department to carry out, with fidelity and intelligence, the methods and rules of that policy as soon as it is sanctioned by law.

In addition to these leading principles of government, essentially English in origin and development, there are also to be observed in the nature and operation of the Canadian system of parliamentary government other matters which, though apparently of minor importance, are nevertheless of much significance since they are intimately connected with the efficient administration of public affairs, and illustrate the tendency to follow the English model in all essential respects, with only such modifications and changes as a different state of things requires. We see this tendency in the various statutes of the provinces which continue to follow the statutory law of England and in the organization and procedure of the courts of law. We recognize this tendency especially in the close adherence in all the legislative bodies of Canada, principally in the Dominion and the larger provinces, to follow the rules and usages of the imperial parliament. In all these countries parliament is opened with much ceremony, and the speech is read by the representative of the Crown, with all the formalities characteristic of "an opening" in Westminster palace. Indeed in the United States it was the custom of Washington to follow English constitutional usage and deliver, in person, his annual address to congress, but since his time it is sent, at the beginning of each session, by the hands of a private secretary.[1] The written constitution of Canada does not in express terms require the governor-general, or the lieutenant-governors, to open the legislature with English ceremony, or indeed to deliver the speech in person; but in accordance with the practice of invariably following the parliamentary usages of England, as far as possible, these functionaries always come down to open parliament with a speech, unless by illness or other unavoidable cause they are obliged to appoint a deputy for the purpose,[2] just as the English parliament has been frequently of late years opened by commission. The speech is formally answered by an address, petitions are presented, bills are introduced and passed through their various stages, committees of supply and ways and means occupy a great portion of time, questions are asked of the government, debate is conducted, and in short all the proceedings are carried on in accordance with the rules and usages which are the result of the experience and wisdom and business capacity of the great prototype of all the legislatures of the colonial empire. Indeed, a visitor to a Canadian legislature will see, in full operation, the old forms and usages of the English House of Commons which existed before the adoption of the closure and other rigid rules, rendered necessary by obstruction, that discreditable feature of modern parliamentary warfare. Some of the old constitutional usages of England have been considered so important that they have been incorporated in the written constitutional law. It is now a part of that fundamental

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[1] "George Washington used to deliver his addresses orally like an English king and drove in a coach and six to open congress with something of an English king's state. But Jefferson, when his time came in 1801, whether from republican simplicity, as he said himself, or because he was a poor speaker, as his critics said, began the practice of sending communications in writing; this has been followed ever since." Bryce, i. 73.

[2] In the first session of the legislature of Canada in 1841, the governor-general did not come down on the first day, but the house proceeded to elect a speaker without any instruction. The Union Act of 1840, like the B. N. A. Act of 1867, was silent on this point; but exception was taken to the course of the governor-general at the time, and ever since British constitutional usage has been followed. The governors of Canada have invariably delivered the speech in person, though it is now usual for a deputy-governor (generally the chief justice) to attend on the first day of a new parliament and give the necessary constitutional authority for the election of the speaker. Here we have another proof that the preamble of the B. N. A. Act is not, as Mr. Dicey calls it, "a piece of official mendacity."

law, the British North America Act, that parliament should meet once every twelve months,[1] that the recommendation of the Crown should be given at the initiation of every money vote,[2] and that the Commons' houses alone should commence measures involving public burdens.[3] The senate generally follows—and so do the upper houses usually—as nearly as possible, the procedure of the lords, but the constitutional law only gives it and the commons the powers, privileges and immunities of the English House of Commons, as enjoyed at the time of the passing of any Canadian act defining such powers.[4] Consequently the powers of expulsion, suspension and commitment exist in full force in the parliament of Canada, and the same is true of the provincial legislatures so far as they have invested themselves, by statute, with all the powers necessary to their existence as a legislative body.[5] When the business of the session is concluded the representative of the sovereign comes in state to the senate chamber, and there delivers the closing speech, in which the principal measures of the session are detailed with official brevity, and, at the same time, gives the royal assent to the various bills. In giving this assent, he does not use that official phrase which is a relic of the times when Norman influence was dominant in the courts, in parliament, and in public administration. In the English House of Lords the sovereign still declares, *La Reyne se veult*, though in accordance with the modern principle of ministerial responsibility which has brought into disuse the prerogative of veto—a prerogative not used since the days of Queen Anne—it is no longer necessary for her to resort to the official phrase *La Reyne s'avisera*.[6] In the majority of the provinces the English language alone is used in the proceedings of the legislatures, but in the parliament of Canada, and necessarily in the legislature of Quebec, the assent is given in the two languages, though not in the Norman French of the English parliament. When the list of bills has been read by the clerk of the Crown, the clerk of the senate uses the formal phrase :—

"In her majesty's name his excellency the governor-general doth assent to these bills."

"Au nom de sa majesté, son excellence le gouverneur-général sanctionne ces bills."

In the case of the supply bill, it is presented as in England, by the speaker of the Commons with the usual formal speech, and the governor-general then assents through the clerk of the senate in these official terms, which are an adaptation of the sovereign's assent[7] :—

"In her majesty's name, his excellency the governor-general thanks her loyal subjects, accepts their benevolence, and assents to this bill."

"Au nom de sa majesté, son excellence le gouverneur-général remercie ses loyaux sujets, accepte leur bienveillance, et sanctionne ce bill."

But while we have adopted to our decided advantage the important principles of the parliamentary and legal systems of England, we have at the same time been able, in

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[1] B. N. A. Act, s. 20. [2] Ibid. s. 54. [3] Ibid. s. 53.

[4] Imp. Act 38–39 Vict. c. 38, s. 1, which amends s. 18 of B. N. A. Act. See Bourinot's "Parliamentary Procedure," pp. 187, 458–461.

[5] Bourinot's "Parliamentary Procedure," pp. 205–209.

[6] This procedure is equivalent to the "reserve" of a Canadian bill for the royal assent. See *Ibid*, p. 567 *et seq.*

[7] "La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult,'

view of a new and changed condition of things, free from the trammels of the traditions and usages of an old world, to rid ourselves of many customs and practices which have not been suitable to the circumstances of Canada. Though primogeniture forms a part of the common law of England, it has, like other relics of feudal times—the seigniorial tenure of Lower Canada for instance—long since passed away from the law of the English speaking provinces, while it had never a place in the civil law of French Canada.[1]

Slavery had only a nominal existence at any time in Canada, and the moment its legality was brought before the judges, they declared in emphatic phrase that slavery is antagonistic to that principle of British liberty which allows no man to have absolute power over the life, liberty and future of another, whatever may be his colour.[2] The registration of titles and the conveyance of real estate have been rendered of great simplicity as compared with the old English system, with all its legal complications and expenses; and improvements are still being made in the same direction—especially in the new

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[1] The preference of males to females was quite agreeable to the laws of succession among the Jews, and also among the Athenians, but was almost unknown to the law of Rome, and to the customs which the barbarians practised on their first establishment within the Roman empire. In the evolution of the feudal system, females were excluded since they were incapable of bearing arms and performing military service, and it became necessary to preserve the dignity of estates, to which titles appertained, and to make them impartible. See Stephen, "Commentaries," i. 403 *et seq.*; Maine, "Ancient Law," pp. 235, 236. Primogeniture was not abolished in Upper Canada until 1851, when Mr. Baldwin, then the leader of the second Baldwin-Lafontaine ministry, brought in and carried a measure for that purpose. The plan of descent and inheritance introduced by this Act (14-15 Vict., c. 6) is based on the civil law and bears a close analogy to the mode of succession to personal estate established under a statute passed in the reign of Charles II, and known as the Statute of Distributions. See Dent's "Canada since the Union of 1841," ii. 232. It is interesting to note here, as a curious point of history, that in the legislation of Pennsylvania (in 1683) early provision was made for the descent and distribution of intestate estates by which they were to be divided among all the children, the oldest son having a double share, as in the system in vogue among the Jews. Story, "Commentaries" (Cooley's ed. of 1873). i. sec. 125. Stephen, "Commentaries," i. 404.

[2] Slavery undoubtedly existed in Canada and Louisiana during the French regime and for some years after the cession to England, though owing to the climate and to the discouragement of the Canadian authorities and the Church it never obtained any substantial foothold. On the 13th April, 1709, the intendant issued an ordinance (Edits et Ordonnances, iii. 471) relating to the sale and purchase of negroes, and of savages called Panis. By the articles of capitulation of Montreal (art. 47) the institution had full recognition. In 1784, according to the census, there were 304 black slaves in Canada, but the historian Garneau concludes that there were none at the time of the conquest, and that the number in question belonged to merchants who had dealings with the United States, and especially with the South. See Garneau, "Histoire du Canada," ii. 92, 95, 167; iii. 90, and Lareau, i. 285, 369; ii. 24. Dunn in his "History of Indiana" (Am. Commonwealth Series, pp. 125, 126), shows that slavery existed in the state when it formed a part of the government of Canada, and also of the government of Louisiana. In 1792, it was proposed to pass an Act in the legislature of Lower Canada abolishing slavery, but it did not become law. Garneau expresses the opinion that the bill failed because it was felt unnecessary in view of the opposition to the institution of slavery in the country; iii. 90. Several English-Canadian historical writers speak of a decision of Chief Justice Osgoode in 1803 as practically abolishing slavery (even Johnson's "First Things in Canada," and McCord's "Handbook of Canadian Dates" state the same thing as a fact), but as that functionary left the province of Lower Canada in 1801 there is evidently an error in the statement. It is a fact, however, that in 1793, while this gentleman was chief justice of Upper Canada, and at the same time speaker of the legislative council of the province, he delivered a charge to the grand jury, at one of the sittings of his Court, the effect of which was to induce the legislature to pass an Act which, while acknowledging the existing rights of masters, provided for the future liberty of the children of slaves and practically abolished slavery in the province of Upper Canada. See Read, "Lives of the Judges of Upper Canada," p. 23. Slavery terminated throughout all the British colonies by Act of the Imp. Parliament, Aug. 1, 1834.

territories of Canada—by the adoption of what is known as the Torrens' system of Australia.[1]

The municipal system of Canada, especially that of the premier province of Ontario, has been for many years an example for imitation to the parent state, where the complicated and cumbrous system of local administration which had gone on for centuries has only quite recently been, as far as practicable, simplified to meet the modern conditions of things. In Canada the present system has been the result of the political development of the country. In the early days of the provinces there was no township system of government as existed in New England, and indeed the spirit of the imperial government, for some time after the war of independence, was antagonistic to the establishment of such institutions as prevailed in the old colonies. The loyalists do not appear to have made generally any energetic effort to reproduce in their entirety the institutions of the country from which they had fled. Be this as it may, the imperial authorities were not ready to establish the township system of Massachusetts when it was more than once suggested to them in the course of time,[2] or even to adopt such advice as was given them by Lieutenant-Governor Simcoe, who, when in charge of affairs in Upper Canada, recommended the adoption of a modified system of local administration, over which the government could always exercise an immediate control, and in which the popular element was, practically, in leading strings. His plan was to give the principal towns a corporation "which should consist of a mayor and six aldermen, justices of the peace, ex-officio, and a competent number of common councillors to be originally appointed by the Crown;" the succession to vacant seats to be made "in such a manner as to render the elections as little popular as possible;" such corporations being intended "to tend to the support of the aristocracy of the country." The Duke of Portland, as the mouthpiece of the imperial government regarded the proposition "as very unfit to be encouraged by the parent state in a dependent colony," inasmuch as it was "only through the executive power vested in the person having the government of the province that the sway of the country could be exercised."[3] But Englishmen, wherever they may happen to be, are sure, sooner or later, to show the natural tendencies of their race, and make efforts to manage their affairs in accordance with the old methods of the parent state. The colonies of New England, consciously or unconsciously, reproduced the old system of primary assemblies and of township government as it existed in early English

[1] This simple system of land transfer owes its origin to Sir Robert Torrens, who was formerly connected with the department of customs in South Australia. Its chief benefit is the indefeasable nature of the title obtained, together with the speed and certainty of transfer and the abrogation of the necessity of abstracts of title. It is now in operation in Toronto and the county of York, in Manitoba, and in the North-West Territories. The "Torrens' System," by H. C. Jones (Toronto, 1886), gives an interesting review of the first legislation in Canada on this subject. See also an article in the 'Canadian Monthly' (vol. ix, p. 322) by Mr. Holmstead, who says that it occurred to Torrens that "as in the selling of a ship there was no such difficulty, hazard, or expense about ascertaining the title of the owner, the same system which had proved to be effective for the transfer of ships might be made equally so for the transfer of lands." This is the basis of a system which is working admirably in Canada and Australasia.

[2] See John George Bourinot's "Local Government in Canada," in 'Johns Hopkins University, Studies,' v. 200-218.

[3] See an interesting article on this subject in the 'University Quarterly Review' of Toronto, April, 1890, by Thomas Hodgins, Q. C.

times.[1] In Canada, on the other hand, it was not until after the establishment of legislative bodies that a system of local administration was slowly developed, generally on the lines of the county system of England, in which the courts of quarter sessions composed of magistrates, with a chairman, exercised so important a jurisdiction. In all matters of large importance, however, the legislatures were so many municipal bodies who voted the money required for roads, bridges and other public works, and it was not until after the concession of responsible government in 1841 that the foundation of the present municipal system of Canada was laid. This system naturally developed with the progress of the country in wealth, population and enterprise. As we trace back its history we see how, in this particular, the aptitude of the English race for local government enabled them to adopt more readily the methods of an efficient system of local administration than was the case with French Canada, where the mass of people were without traditions of local government or any practical experience of its advantages, and were, besides, reluctant to adopt changes which would involve local taxation. Although all the provinces now possess a machinery of local self-government, yet it is the province of Ontario which occupies the vantage ground in this respect, just as her people in the old days of Upper Canada always showed greater energy and enterprise than the other provinces in all matters of local importance.

The student of comparative politics will find much to interest him in the names of the various local divisions and of the machinery of local administration in the provinces of Canada, since he will see in them many illustrations of the closeness with which Englishmen everywhere cling, even under modern conditions, to the nomenclature and usages which associate us with the primitive times of English government. and illustrate the gradations in the political and civil growth of England. The most important unit of local government in Ontario is the township [2], which carries us back to the early days when our English forefathers lived in their village communities, of which the "tun" or rough fence or hedge that surrounded them was a characteristic and essential feature. The chief officer of the township is the reeve, who, as an "active" or "excellent" member of his community, took part in early English times in the various moots or public

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[1] Dr. Mellen Chamberlain, in an interesting paper read in January, 1890, before the Massachusetts Historical Society, takes exception to the conclusions of the Modern Historical School, that the Englishmen who founded New England, brought the form of their local institutions with them. "So our English ancestors," he says, "did not bring English towns with them, nor English churches, nor vestries, nor British institutions. But on occasion they builded for themselves, as Englishmen always and everywhere had done, and still do, according to the exigencies of their situation, and after the manner of their race." But when so astute a thinker says this much, he admits practically that the local institutions of the colonies are the inevitable evolution of old English or Teutonic principles. It was not necessary for the colonists to have exact plans of local government "cut and dried" in the ships that brought them over; as soon as they chose their new homes, they naturally followed the instincts of the English race, and reproduced those English institutions which were suitable to their condition.

[2] Mr. McEvoy in an interesting essay on "The Ontario Township" 'Toronto University Studies in Political Science,' shows that the backbone of local government in Ontario to-day is the township council, and that the town meeting was a feature of early local administration which exerted a potent influence on the great mass of the rural population of the same province, though of course it had never assumed the importance of the town meeting of New England. In its modified form, however, it shows that the old Teutonic instincts of an English people, wherever settled, assert themselves sooner or later in some form. For an instructive account of the township system see "The Germanic Origin of New England Towns," by Dr. H. B. Adams, and "Town and County Government in the English Colonies of North America," 'J. H. U. Studies,' vols. i & ii.

assemblies of the township, the hundred, and the shire.[1] The alderman of the city and town councils is a link connecting us with the system of shire government in early English times; but if modern aldermen cannot claim in any sense to be the equals in rank of their eminent prototypes, if they have lost their ancient nobility, still they ought not to have necessarily lost that practical usefulness which was probably also a distinguishing feature of the title in the days when it had much significance.[2] In Ontario there still remains an electoral division, known as riding which carries us back to the time when the Dane came across the North seas and made his home in the ancient shire of York.[3] But alongside of this old English nomenclature, we see also in many names of Canadian local institutions a heritage of the Norman conquest of England. The largest division for municipal as well as legislative purposes, long ago became the county and not the shire—a name replaced by the Norman French term when the conquerors reorganized the local divisions for purposes of government.[4] The representative body for the local administration of the

[1] The principal officers of the tun-gemot (see supra, p. 4 note) were the gerefa or headman, the bydel or messenger, and the tithingman. Skeat (Etymol. Dict.) and Kemble (Saxons, II. 154) derive "Reeve" from Anglo-Saxon rof, active or excellent. Stubbs, "Select Charters," p. 9, concludes that the reeve was the lord's nominee, when the township was the property of a lord, who is a noble follower, comes, gesith, thegn, of the king, with jurisdiction over the men of the township. The reeve settled petty disputes, collected contributions to the national revenue, and with his companions represented the township in the court of the hundred, and in the folkmoot or shiremoot. "The use of the name for the presiding officer of the township council [of Upper Canada] is peculiar to Canada, so far as I know," says Professor Ashley in his introduction to McEvoy's essay on "The Ontario township", "and was possibly the result of the revived interest in early English institutions that marked the period. It may be noticed that Kemble's Saxons in England, with its chapter on the Gerefa, had appeared in the preceding year."

[2] The ealdorman represents the princeps of Tacitus and Hacbald, and the satrap of Bæda, but he was also the dux or herotoga. Soon after the settlement of each tribe, whether the followers of Hengist or Cerdic, the invaders of East Anglia or Deira, a monarchy was set up under the most powerful ealdorman. With the process of conquest and the incorporation of the smaller states, their chiefs sank into the position of vice-kings, governing under the original title of ealdorman their former districts, which now became practically and perhaps in name also shires. In historic times the ealdorman was appointed in the central Witenagemot. Howard, pp. 301, 302. The ealdorman was superseded by the earl before the conquest and ceased to sit in the shiremoot. Stubbs, "Constitutional History," i. 160. The lord lieutenant of English counties really represents the old office. Hallam, "Constitutional History," ii. 133. The modern name of alderman obviously originated in the municipal history of London. Green, "Conquest of England," p. 442 refers to the first record, in the time of Aethelstan, of a guild of a hundred burghers who organized themselves in groups of three, each with its headman, the whole body being united under an ealdorman, with definite provisions for common meeting and common contributions, with a view to the enforcement of a rough police and self-government. One of the Oxford writers of "Essays introductory to the study of English Constitutional History" (London, 1887), says with truth: "The organization of the English guilds was that of brethren electing aldermen, and from the early identification of the guild with the town, comes the fact that the alderman is now a municipal dignitary, not the chief of a trades-union. For such in fact was the original meaning of the guild merchant. The alderman therefore is a representative of the guild; the mayor, on the other hand, is the representative of the communa of the place; for the last and crowning privilege of a town constitution was that its communa should be 'concessa,' *i. e.* not a mere private association, but a body made legally recognizable, with the privilege of choosing a mayor as its formal head and representative." See article in the "Essays on the Anglo-Norman and Angevin administrative systems."

[3] The first settlement of the Danes was in Deira, in the area occupied by the present Yorkshire. Green, "Conquest of England," p. 110. The riding is an aggregation of hundreds below the shire. Stubbs, "Constitutional History," pp. 100, 108. It is a changed form of thriding or triding, according to Skeat. Long Island, which was called Yorkshire in 1664, on the promulgation of the code of the Duke of York, was divided into three ridings or judicial districts, which were probably rudimentary counties, corresponding roughly to those of counties subsequently organized. Howard, pp. 358-360.

[4] The shire is historically a West Saxon institution. It is necessarily a district "shorn off" from some neighbour district. Scholars are now agreed that the first English shires were merely the old tribal states. By

county is not the folk-moot but is called the council, from an adaptation of a Roman name by the French. The mayor of the council is also an inheritance of the blending of the Latin and French tongues.[1] The parish of Lower Canada is, in its origin, a purely ecclesiastical division, established in the days of the French regime, though it may be proclaimed a division for municipal purposes by the executive authority. In New Brunswick there is also a division known as a parish, which appears to have been established in the early days of the province in imitation of the local institutions of Virginia.[2] But the name itself connects us with very remote times when the ecclesiastical system of Rome established itself in ancient Britain and Gaul.[3] The coroners—the "crowners" of Shakespeare's grave-digger in Hamlet—is one of the many evidences that our legal system gives us of the predominance of the Latin tongue in the English law.[4] Centuries have passed since they could exercise important judicial functions in the place of the sheriffs in the local courts. The sheriff—the shire-reeve, or the head man of the shire—was long ago deprived of the large powers he enjoyed in the administration of local affairs. But it is interesting to note how this title remains to illustrate the history of his English origin just as the custodes placitorum coronæ—the old Latin name of the coroners—takes us back to times when the Norman ruled.[5] The humble peace officer of the village and

the tenth century they became political and territorial divisions of the United Kingdom. The principal officers were the ealdorman, and the scirgerefa or sheriff, and the principal assembly was the scirgemot, or shiremoot, which had judicial and even legislative functions. Green, "Conquest of England," pp. 223; Howard, pp. 301, 302. One of the results of the conquest by the Normans was the application of the Norman term of counté to the shire, for purposes of government.

[1] "It is most remarkable that we have adopted the Spanish spelling Mayor which came in in Elizabeth's time, spelt maior in Shakespeare. Richard III, iii., i., 17, (first folio). The word Mayor was first used temp. Hen. III, Liber Albus, p. 13." Skeat, Etym. Dict. The Mayors of the Frankish palace were hereditary offices held by the greatest of baronial families, and the famous Charles belonged to the Martels who filled the position for several generations. This name, like that of alderman, has diminished very much in rank since those early times. Under the Normans the town reeve, who collected the dues for the king from the guilds or body of the citizens in the burghs, represented the Mayor. Gradually the name was given to the town bailiffs of London, and then free election was granted to the citizens by charter (10 John). See Gneist, "History of English Constitution," i. 151, 152. And *supra*, p. 32 note, where it is shown how the name grew up with local administration in the towns.

[2] Bourinot, "Local Government in Canada," 'J. H. U. Studies,' v. 222, 238.

[3] "The stages by which the township passed into its modern form of parish, and by which almost every trace of its civil life successively disappeared, are obscure and hard to follow, but the change began with the first entry of the Christian priest into the township . . . . In its election of village officers, of churchwarden and way-warden, as well as in its right of taxation within the township for the support of church and poor, we are enabled to recognize in the parish vestry, with the priest at its head, the survival of the village-moot which had been the nucleus of our early life." Green, "Conquest of England," pp. 14, 15; Stubbs, "Const. Hist.," i. 96, 104, 260.

[4] "In the time of Richard I, (1194) the pleas of the Crown were taken from the sheriff (see *infra*. note 5) and given to a new officer called 'coroner,' chosen in the county court by the suitors there assembled, and so a national rather than a royal functionary. Gradually losing all his duties save that of inquest in cases of murder, the coroner drifted into his present modest position." "The Anglo-Norman and Angevin Administrative System," "Essays introductory to the Study of English Constitutional History" pp. 140, 149.

[5] The scirgerefa or shire-reeve performed in early English times judicial as well as financial duties. Gradually he arose to be also a great executive officer, and absorbed the judicial authority of the ealdorman and bishop in the shire-moot, which continued the judicial authority of the folcgemot, or original assembly of the people in the shire. He had charge of the royal estates and of the folkland. He levied all fines to the king, seized the lands and chattels of criminals, and collected taxes levied on the nation by the Witenagemot. In Norman times his powers did not decrease, but were even greater in fiscal matters. He tried pleas of the Crown in the capacity of a royal justice. He was also given the command of the armed men of the shire when the old office of ealdorman

town is still called a constable, but he has fallen decidedly from that high estate of ancient days when his name represented a dignity which the great nobles of France and of England were proud to wear.[1]

It would be doubtless interesting to the student of Comparative Politics were I able to continue much further this review of the characteristic features of the government of the countries which make up the Dominion; but I think I have already proved sufficiently the truth of the assertion I made at the commencement of this lecture, that no country in the world affords more material for thought to the political student than Canada, possessing as she does two distinct nationalities, descended from the two great peoples who have been for centuries engaged in the work of civilization on principles which show, in the one case, the impress of the Roman, and in the other the influence of the Teuton. But beyond any antiquarian researches into the origin and evolution of institutions, is the practical problem which offers itself for solution when we come to consider the position of the French Canadian among the English communities of the federal union. Should we endeavour to find an analogy between the position of the Norman in England and that of the Frenchman in Canada, we cannot but see that the circumstances of the two peoples are very different. The Norman, in the course of time, was assimilated by the sturdy English race, and the result of this assimilation was that admirable combination which is now known as the English people. The Norman has enriched the old English tongue with many new terms necessary to that wider sphere of political action which was the sequence of the conquest, and has engrafted new institutions on the original basis of the old English social and political system which he never at any time destroyed, although he gave it a more effective organization and a wider scope in the course of centuries. The Saxon and Norman have become English in language, thought and aspiration. In Canada, on the other hand, a century and a quarter has passed since the French Canadian became a subject of the English sovereign, and has had remarkable opportunities for developing his national instincts under the free institutions of England, and we see no signs of a lessening of attachment to the civil law, to the

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fell into disuse. It is an interesting study to follow the gradual decrease in the powers of the sheriff until, with the creation of justices' courts, and the evolution of regular national courts, he became the mere executive officer of the law that he is now. The formal abrogation of the sheriff's military power did not take place till Queen Mary appointed a lord-lieutenant for each English county in 1556. In 1871 the militia jurisdiction of the latter functionary reverted to the Crown. See Green, "Conquest of England," p. 230; Gneist, "Constit. Hist.," ii. 26; Stubbs, "Const. Hist.," i. 113, 187, 206, 272, 394; Howard, 302–318; "Essays introductory to study of English Constitutional History," pp. 37–39, 139, etc.

[1] Two valuable papers on "Constables," showing great research, will be found in the first volume of 'J. H. U. Studies,' by Dr. H. B. Adams. The term was introduced into England through the Norman-French Connetable, in old French Conestable or Cunestable, which is derived from the low Latin Constabulus (comes stabuli or count of the stables). It was an office belonging to a nexus of court institutions like those of chamberlain, cup-bearer and steward. The office of Lord High Constable (Constabularius totius Angliæ) came into prominence as an hereditary office in the person of Miles of Gloucester, in the reign of Stephen (1135–1154). He was the representative of the king in all matters appertaining to castles and armies. Constables, however, long existed in every town and castle, in every earldom, and upon every great manorial estate, and the office diminished in dignity the nearer it approached to the common people. Like other civil officers, the petty constable was the outgrowth of military beginnings. The ancient tithingman who mustered his quota in times of war from the hundred or wapentake, or the tithing, became the Norman parish constable, the keeper of the village peace, and of the town armour. The petty constable, so-called to distinguish him from the high constable of the hundred, continued to be elected by his tithing, vill, or parish down to recent times. He was the select-man of New England, practically.

French language, or to the great ecclesiastical organization which has always wielded such an enormous influence in Canada from the days of Laval. When the Norman conquered England he found himself among a people with ancient institutions, eminently favourable to freedom, and then commenced that process of assimilation to which I have more than once referred. But no such opportunities for assimilation have ever been possible in French Canada. There, from the outset, it was the policy of England, for various reasons intelligible to the historical student, to surround the French Canadian with all the guarantees that could be given for the preservation of his language and special institutions. He has always had facilities given him—first by the Quebec Act, secondly by the Constitutional Act of 1791, and eventually by the Federation of 1867—for the perpetuation of his local autonomy, and the result has been necessarily to prevent anything like such a blending of the two races as long ago took place in England. What might have been the result had England pursued a different policy towards this people in 1774 and in 1791—the dates of the two great imperial statutes, practically shaping the destinies of French Canada—it is idle now to speculate, and we can deal only with a condition of things which seems, in many essential respects, of a permanent character. It is true in the important centres of thought and industry the French Canadian is forced to speak the English language, but it is only as a matter of business and convenience, since, at home, he and his family cling to the tongue of their ancestors. In the parliament of Canada the Frenchman, as a rule, speaks the language of the majority —a task which he performs with ease and even elegance in many cases; but in the legislature of Quebec, where the English are in a small minority, it is the French which has the supremacy. In the nature of things, judging from the signs of the times, the language of the new provinces, eventually to be formed in the North-West Territories, is likely to be exclusively English, and the French tongue and institutions will probably be confined, for the most part, to the province which the French Canadians have built up by their patience and endurance, and made essentially their own, as far as national characteristics can make it such. But without indulging in further speculation on the probability of the assimilation of the two nationalities of Canada—an assimilation certainly desirable in the development of a nation, when it is natural, although by no means a condition essential to national greatness—we can see that, after all things are impartially considered, it is to the English principles of local self-government that the French Canadian owes the privileges he has so long enjoyed in absolute security, and it is to English institutions that his province must continue to owe its prosperity and happiness as an integral part of the Dominion. The French Canadian has worked in harmony with the English Canadian to build up a nation on those principles of English constitutional government which, when applied in connection with a federal system, seem admirably adapted to give strength and vitality to a people. Under no other system of government would it be possible to harmonize the antagonistic elements of race, religion and language which exist in Canada. Without pressing further a conclusion which must be obvious to any one who looks at the history of the political development of Canada under the benign supremacy of England, let me quote, in closing, the suggestive words of an eminent constitutional writer in an Australian colony, who has laid down a doctrine which commends itself to every student of institutions as replete with practical wisdom and statesmanlike foresight, and which

can be well applied to a country like our own, composed of a number of provinces having diverse interests and nationalities to unify and harmonize. "We have been given English institutions," says Professor Hearn,[1] "but the gift is worthless unless we care o use it in the spirit in which it has been bestowed. English institutions must be worked by Englishmen in the English way. That way implies mutual respect, mutual forbearance, a readiness to concede what is not material, tenacity in holding fast that which is good; in one word, an honest and loyal desire to promote the public benefit, and to secure to every man his just rights, and neither less nor more than those rights. Such is the course that our own fathers have pursued; it is thus that England has grown to greatness; such, if we wish to obtain the like results, is the course that we too must follow."

[1] See his essay on "The Colonies and the Mother Country" at the end of the second edition of his work on "The Government of England."

CHAPTER II.

CANADA AND THE UNITED STATES.

Though Canada contains only a small population and still occupies a relatively unimportant position among the peoples of the world compared with the great republic on her borders, yet there are many features of her political development which cannot fail to be deeply interesting and instructive to the students of political science. Within a very few years Canada has made remarkable strides in the path of national progress through the influence of a political system eminently adapted to stimulate the best energies and expand the thought and intellect of her people. Indeed the prominence Canada has suddenly attained can be seen from the attention that is now being directed to her affairs and her future destiny. It would seem, in fact, that her industrial prosperity and political development have evoked so much interest in the minds of the politicians and journalists of the United States that they are now considering whether a country, which has evidently so noble a future before it, should not be gently cozened into giving up all her dreams of ambition and be drawn, as soon as possible, into the seductive embrace of a nation, which, with a curious oblivion of geography, has generally appeared to claim the exclusive right to be called "American."[1]

Having a contemporaneous history on this continent, lying contiguous to one another from the Atlantic to the Pacific Ocean, the two countries naturally offer many points of comparison worthy of the close contemplation of students and statesmen. Their political systems especially afford many materials for reflection which, studied in a scientific and impartial spirit, may be made profitable to them both. The Canadian Dominion and the American Commonwealths trace most of the political institutions they possess to the great English mother of all free governments, though in the course of many years diversities have naturally grown up in the working out of those institutions, so that a mere ordinary observer is apt to forget their true origin and nature. But whatever divergencies there may be in the systems of the two countries, we can see after a little thought and study

[1] The Dominion of Canada has an area of 3,470,257 square miles, in addition to which there is a water area of lakes and rivers, calculated at 140,000 square miles. In other words, it comprises an area nearly equal to that of Europe, and about one-sixteenth of the land surface of the globe. The area of the United States is given at 3,602,990, including Alaska. See "Pocket Atlas and Gazetteer of Canada," edited by J. M. Harper, of Quebec, and Spofford's "American Almanac."

that they have arisen chiefly from the fact that Canada has remained a dependency of Great Britain, and consequently followed closely the constitutional practices of the parent state, while the United States, having long ago become a national sovereignty, has raised on the foundations of a constitution, based itself on principles drawn largely from those of the English constitution, a great structure which has, in the course of years, undergone many modifications in the working out of the original plans, in order to adapt it to the practical needs of the people and the modern conditions of a democratic government. The architecture may now be considered of a politically composite order, in which we see that, while the design of the original founders has been varied in many respects, yet, after all, the very pillars that support the noble dome that crowns the edifice rise from the foundations of that English common law, and of that parliamentary government which have enabled England, as well as the United States to attain the foremost position among the nations of the world.[1]

It has been the good fortune of Canada to develop slowly under the fostering care of England, and to have been able to survey at a reasonable distance the details of the political structure raised by her neighbours; and consequently when her statesmen came, less than a quarter of a century ago, to enlarge the political sphere of the provinces of British North America and to give greater expansion to the energies of the people in the organization of a federal union, they were able to base it on those principles which the experience of the mother country and of their great neighbours showed them was best adapted to give strength and harmony to all the political parts, and enable them as a whole to work out successfully their experiment of government on the northern half of this continent.

The history of Canada is contemporaneous with that of the United States. Jamestown was founded by adventurous Englishmen about the time when the intrepid sailor of Brouage landed at the heights of Quebec. It was not until twelve years after the foundation of Quebec by Champlain that the Pilgrim Fathers cast anchor in the waters of the New England coast. From those times until these, Canada and the United States have worked out their fortunes apart from each other. For a century and a half, under the French regime, the colony on the banks of the St. Lawrence was a standing menace to the English-speaking colonies nearest to the vast territory claimed by France in those days. The records of many a village and town in New England tell the sad story of the massacre and pillage of the early settlers by reckless bands of Frenchmen and

[1] "The constitution of the United States is a modified version of the British constitution; but the British constitution which served as its original was that which was in existence between 1760 and 1787. The modifications introduced were those, and those only, which were suggested by the new circumstances of the American colonies, now become independent." Maine, "Constitution of the United States," p. 253 of "Popular Government." "The American constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in that constitution that is absolutely new. There is much in it that is as old as Magna Charta. The men of the convention had the experience of the English constitution. They preferred, so far as circumstances permitted, to walk in the old paths, to follow methods which experience had tested. Accordingly they started from the system on which their own colonial governments, and afterwards their state governments, had been conducted. This system bore a general resemblance to the British constitution; and in so far it may with truth be said that the British constitution became a model for the new national government." Bryce, "The American Commonwealth," i. pp. 34-42. The causes of the radical differences in the two constitutional systems are admirably set forth in this great work.

Indians led by bold adventurers of the old regime. On the banks of many a river and bay in Nova Scotia and New Brunswick—in those days named Acadie—can still be seen the ruins of forts—Port Royal, now Annapolis, for instance—where the New Englander and the Frenchman fought for the mastery on the Atlantic coast. Amid the sheltering elms of the college grounds of Harvard College, above a doorway of Gore Hall, is fixed a small gilded cross which recalls the history of the formidable fortress of Louisbourg, which first fell before the expedition led by an enterprising merchant of a town in New England. Only a short while since the writer stood on the site of that once famous bulwark of French ambition on this continent; a few grassy mounds now cover the old walls, long since levelled to the ground, and sheep pasture above the graves of the Frenchmen and Englishmen who fell during the sieges which Louisbourg suffered before it finally passed into the possession of England. All the events of those times had a powerful influence on the destinies of the people of the thirteen colonies. Whilst it is true that the supremacy of France on the St. Lawrence and in the valleys of the Ohio and the Mississippi gave a certain guarantee for the continuance of these colonies, as possessions of England, yet at the same time it is clear that the very exertions which they were forced to make to keep the invader from their homes and to drive France, if possible, from America, were gradually teaching them lessons of resolution and self-reliance which bore fruit in later times, when they asserted their independence. The success of the expedition led by Pepperell against the powerful fortress of Louisbourg on the coast of Cape Breton must naturally have given confidence to the people of New England in days when their cause seemed to be at the lowest, and it was a question of contending against the power of England herself.

That the conquest of Canada had a remarkable influence on the destiny of the old colonies is now a generally admitted fact. The opinion, that was entertained on the subject in England, after the fall of Quebec, can be easily understood from a perusal of the discussion that took place, whether it was not actually for the true interest of England to give up the great territory of Canada and retain the relatively insignificant island of Guadaloupe, since it was a question of keeping one or the other. There was no question of the independence of the colonies at that juncture; on the contrary the people had energetically, as a rule, seconded the efforts of the parent state for the supremacy on this continent; but philosophical thinkers, as well as practical statesmen, had obviously a foreboding that there were signs in the temper of the people and in the condition generally of affairs on the continent that threatened the integrity of the Empire in America. One, William Burke, a kinsman of the famous Edmund Burke, appeared to have voiced these opinions in a pamphlet in which he urged the retention of the small West Indian island on the grounds that "if the people of our colonies find no check from Canada they will extend themselves almost without bound into the inland parts . . . . . By eagerly grasping at extensive territory we may run the risk, and at no very distant period, of losing what we now possess . . . . . A neighbour that keeps us in some awe is not always the worst of neighbours . . . . . If we acquire all Canada we shall soon find North America itself too powerful and too populous to be governed by us at a distance."

It is a curious fact that Franklin, with all his political sagacity, combated such arguments as I have just quoted by saying that he had not "the least conception" the

growth of the colonies would ever render them dangerous. On the contrary, he was of opinion that the "foundations of the future greatness and stability of the British Empire lie in America." By keeping Canada, "all the country from the St. Lawrence to the Mississippi will, in another century, be filled by British people." Britain herself would "become vastly more populous by the immense increase to its commerce;" the Atlantic sea would be "covered with her trading ships, and her naval power, thence continually increasing, would extend her influence round the whole globe and awe the world."[1] These words, which we must take as the sincere expression of the views of the most astute American of those times, show us how blind some observers and thinkers can be to the signs of the times around them, and how little they are able to gauge correctly the effect of events and circumstances on the condition and destiny of a people. As we look back to the history of the old colonies we can now see that events had been steadily shaping themselves for the assertion of their independence, and that the temper of a people brought up in the freedom of a new country and in the possession of self-government, practically uncontrolled by the power or authority of the imperial state, was ready to assert itself in a very decided way the moment it was considered their rights and privileges were in jeopardy, and that the largely sentimental tie which bound the greater portion of the people to the parent state would be found very frail when it came to the vindication of what they believed to be their liberties as a free community, or to the resenting of real or fancied wrongs. It was not Great Britain, but the thirteen colonies themselves that were to attain the greatness of which Franklin saw a vision as he contemplated the future of the continent of America.

Freed from the threatening presence of France on the St. Lawrence and Atlantic coast, the old colonies continued to pursue their industries and gain strength for the great struggle which soon arose between the king and his self-reliant subjects in America. For years after the conquest Canada was but a poor community, almost nerveless and hopeless, and the efforts of the American congress to obtain the aid and sympathy of the French Canadians in the contest for independence proved entirely futile. The war, however, had one remarkable influence on the destinies of Canada, for it brought into the country a large body of people, known as United Empire Loyalists, who laid the foundations of the English-speaking provinces of Ontario and New Brunswick, and settled considerable portions of Nova Scotia. Like the New England settlement, this immigration of resolute loyal Englishmen has had a decided influence on the industrial and political development of all sections of the Dominion to this very day. This immigration was the commencement of a new era in the political history of British America, and perhaps more than any other incident in our annals has affected the social, religious and political welfare of the whole community that now occupies Canada. Their descendants are now very numerous in every section of the Dominion and occupy influential positions in every walk of life, and it is to their presence and influence we may attribute, to no inconsiderable degree, the political development of the country at large, as well as their loyal adherence to England in good and in evil report, and resistance to all insidious appeals to join the fortunes of this country to those of the great republic on its borders.

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[1] See Morse's "Life of Franklin," 'American Statesmen Series,' pp. 76–82. Also Bancroft, "History of the United States," ii. 525, 526.

For half a century and more the history of the British American provinces has little connection with that of the United States, except during the war of 1812–13, when Canada naturally suffered as the battle-ground of an unhappy contest to which both nations should now look back with deep regret as unnecessary and unjustifiable from all points of view. Canadians can, however, review the history of that contest with pride as a people, for they performed their part in the struggle, though they were in no wise responsible for the cause, with courage and fidelity to the parent state. The battle of Chateauguay attested the heroism of the French Canadians, as Chrysler's Farm and many a battle-ground bore witness to the endurance and patriotism of their English compatriots. Those were days which we trust may never return; the only contest now between the nations then engaged in strife, should be a contest in the development of art and industry on this continent.

Up to 1867 both countries increased in wealth and population. Of course no comparisons need here be made between the two countries in these particulars. With the adoption of the constitution of 1787, which gave new vigour to the American confederation of states, and enabled them to carry on their government with efficiency, the United States steadily increased in all the elements of greatness as a nation. A remarkable influx of people from foreign countries poured in the course of years into the east and thence to the west. New territories and states were formed on all the productive lands of the Union and filled up the Pacific coast as far as the British possessions in British Columbia. A great internecine conflict convulsed the republic for years, but the result was the strengthening of the central authority and the death, to all intents and purposes, of the doctrine of state sovereignty which, as taught for many years, drew all its dangerous inspiration from the existence of slavery—an inheritance from England fraught in the end with misery and ruin to the South. During those sad times Canada became, as might be expected from her geographical position, the home of numerous southerners, and, on account of the sympathy that naturally existed among many people for the South, much bitterness of feeling was evoked throughout the North from the impression that the whole Canadian population desired ardently the triumph of the secessionists and the splitting up of the Union into fragments. If there was such a general feeling—and I think the Canadian people have been much misrepresented in this particular [1]—then they must share the responsibility with the English people, and even with Mr. Gladstone himself, who was not so warm an admirer of the Union as he has since then declared himself. It must be understood that if there was much sympathy with the South in that struggle, it arose, not from any unkindly feeling towards the North, but rather from the conviction that the Union had become too large and unwieldy for one government to manage on democratic principles, and that there was greater security for Canada in two or more republics on the continent than in the existence of a colossal state of insatiable ambition which might, sooner or later, cast covetous eyes on the weaker country on its northern borders. At all events the close of the war saw the relations between Canada and the United States not as favourable as they ought to have been between peoples of such close neighbourhood and kindred aspirations. The result was the repeal of the reciprocity treaty, or free trade in certain natural products of the two countries, that lasted from 1854 to 1866, to the mutual

[1] See speech of Sir E. Taché on this point, "Confederation Debates of 1865," p. 7.

advantage of both ; an event largely brought about by the unfriendly disposition of northern politicians, and from the belief, that no doubt existed in some quarters, that the provinces, especially those by the sea, could be coerced into annexation by destroying a trade which was becoming annually greater and on which they were learning to rely as necessary to their prosperity. The other result was the succession of Fenian raids which were easily repulsed by Canada, though she has never yet received that full indemnity which her statesmen have always urged should have been considered in the settlement of the Alabama and other questions which have been matters of arbitration between England and the United States.

But these very events to which I have been referring—the war of secession, the repeal of the reciprocity treaty and the Fenian raids—have had a decided influence on the condition of Canada, and have given additional evidence how closely bound up each country must always be in the fortunes of the other.[1] The British American provinces had before 1867 attained a complete system of self-government, after years of persistent dispute with the imperial authorities, and after an insurrection in the provinces of Upper and Lower Canada, a rebellion brought about by indiscreet leaders of the popular party which had been long fighting a battle against the stubborn opposition of executive authority and of Crown-appointed officials to political progress and responsible government. But previous to 1867 the provinces were all isolated communities, no more capable than the members of the old confederation of the States of uniting for purposes of commerce and finance or other important national objects. The political difficulties between the French and English sections were, no doubt, the prime moving cause that led to the Quebec conference of 1864 that brought about the federal union of the British American colonies; but it is also quite certain that below the declared motives of the conference lay, deep in the minds of Canadian statesmen, the conviction that the future integrity and security of Canada as a separate and independent community on this continent depended on bringing together all sections into a union which would give the central government control over all matters of general national import and at the same time leave the provincial organizations such powers as are necessary to carry on their administration of local affairs with efficiency. For years such a union had been urged by the most thoughtful men of British America, and its necessity was shown most forcibly as years passed when every effort to have railway communications and intercolonial trade proved futile on account of the impossibility of reconciling the diverse interests and rivalries of the provinces. Commercial reasons had powerful influences on the consummation of the Canadian federal union just as they had in bringing about "the more perfect union" of the American states. It has been truly said, by a sound constitutional authority, that "the consolidation of the industrial interests of the country has proved to be the strongest bond of the federal state,"[2] and the founders of the Canadian Confederation at once recognized the necessity of bringing the provinces into commercial as well as political union at the earliest possible moment. If there were any doubts before on the subject, the repeal of the Reciprocity treaty was a significant warning of what lay before the people of the British American colonies if they continued isolated much longer from each other. The

[1] Sir E. Taché, Sir John Macdonald, Mr. Brown and Mr. (now Sir Hector) Langevin, during the Confederation debate of 1865, referred especially to the antagonistic policy of the United States, pp. 7, 32, 106, 365.

[2] Von Holst, "Constitutional Law of the United States" (Mason's translation), p. 136.

necessity of being in a position to organize promptly and decisively measures of self-defence was shown them by the Fenian raids. The threatened invasion of New Brunswick in the spring of 1866 had, no doubt, considerable influence in reconciling the people of that province to the scheme of the Quebec conference which they had hesitated to accept for several months. So it happened that out of the very circumstances which were apparently calculated to do so much injury to Canada her people learned lessons of wisdom and self-reliance, and were stimulated perhaps more rapidly than otherwise would have been the case to carry out their scheme of national development which had its commencement in 1864, and which since 1867, when it was legally inaugurated, has achieved a success far beyond what even its sanguine promoters predicted twenty odd years ago.[1]

Without dwelling on those phases of national development which have been the results of the federal union, and which are interesting, since they find parallels in the industrial history of the United States, I come now to refer to the leading features of the political constitutions of the two countries. It is not necessary to make any comparisons between the constitutional and political systems of Canada and the United States before 1867, when the provinces were isolated communities, offering many points of comparison with the old confederated colonies previous to the adoption of the present constitution of the republic. It is the union of 1867 that now makes such comparisons possible, for then was adopted a federal system[2] resembling in certain important features that of the United States, but at the same time continuing in the government of the country all the essential features of the British constitution. The two systems of government have each a central government and so many local organizations, known respectively as states and provinces. This central government possesses, under the constitution, control over all those objects of national import which are essential to the security and integrity of a federal state.

A careful comparative review of the powers distributed between the central and state or provincial governments shows us that in certain essential features there is in the constitution of the dominion of Canada a more marked division of legislative authority than in that of the United States. For convenience sake, I give a brief summary of the leading principles that govern the division of national powers in the two countries.

In the United States the powers which shall be exercised by authority of the central government are expressly enumerated, or, in other words, conferred in terms upon congress.[3] Whatever is not granted to the federal government belongs to the states, or to the people thereof.[4] In order, however, to impose checks upon the large powers of the states, thus left unenumerated and open to very wide construction, the constitution expressly restrains them from the exercise of some of the most important powers of sovereignty and subordinates others to the authority of congress.[5] But it does not by any means follow that the constitution, in conferring a power on the central government, expressly prohibits its use by the states. Thus congress has the power to pass a bankrupt law. But if it does not exercise the power the states may do so. As soon as the federal

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[1] See Dilke, "Problems of Greater Britain," pp. 95-100.

[2] See *supra*, p. 19, note 6.

[3] Cooley. "Principles of Constitutional Law," p. 54.

[4] Ibid, p. 29.

[5] Ibid, p. 142.

legislature passes such a law "the state laws will *ipso facto* become of no validity unless the nature of the matter permits two different legislative wills to act upon it at the same time."[1] The enumerated powers of the Washington government have been greatly enlarged by judicial decisions which have recognized the necessity of "implied powers" in the grant of powers expressly given by the constitution to the federal state. It is clearly established that every power of a general character must include also all the powers which are naturally implied in it and are required for the attainment of the end sought by it.[2]

In Canada the powers of the general government, as enumerated in the law, are large, and its jurisdiction extends over a territory almost equal in area to the whole of Europe. An important distinction exists between the powers given to the central government of Canada and those placed by the constitution of the United States under the jurisdiction of the federal authority. The powers of the dominion government cover all those not expressly given by the constitutional act to the provinces, the very reverse of the principle at the basis of the United States instrument. In order also as far as possible to prevent a conflict of powers it is expressly provided that exclusive legislative jurisdiction is given to the dominion government over the classes of subjects enumerated in the section defining its legislative authority.[3] Cases of concurrent jurisdiction are clearly stated, and in such public works as railways the dominion parliament can legislate upon them and declare them to be for the general advantage of Canada. The courts have also recognized practically the possession of such "implied powers" as have enlarged substantially the authority of the central government of the American republic; that is to say, such incidental and instrumental powers as are necessary and proper to carry into execution the express powers of either the central or provincial governments. It has been authoritatively laid down that the central government of Canada, in the working out of a power given it under the fundamental law, may trench upon powers granted to the provinces; upon property and civil rights for instance, which are among the most important powers of those organizations.[4]

The following summary will show in what respects the central governments of the Dominion and the United States possess similar or analogous powers:

The Dominion can "exclusively" legislate on the following classes of subjects:	The United States shall have power,—
The borrowing of money on the public credit;	To lay and collect taxes, duties and imports, and excises, to pay the debts and provide for the common defence and general welfare of the United States;
The regulation of trade and commerce;	To borrow money on the credit of the United States;
The raising of money by any mode or system of taxation;	To regulate foreign and domestic commerce and with the Indian tribes;
Bankruptcy and Insolvency;	To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies;
Naturalization and aliens;	

[1] Von Holst, "Constitutional Law," pp. 56, 57.

[2] Martin v. Hunter, Wheaton, i. 304; "Legal Tender Cases," Wallace, xii. 457, 539; Von Holst, "Constitutional Law," p. 54; Story (Cooley's 3rd edition), ss. 433-435.

[3] B. N. A. Act, 1867, sec. 91.

[4] See Bourinot, "Manual of the Constitutional History of Canada," pp. 90, 100, for summary of judicial decisions on this interesting and important point.

Currency and coinage ;	To coin money, regulate the value thereof and of foreign coin, and fix the standards of weights and measures ;
	To provide for the punishment of counterfeiting the securities and current coin of the United States ;
Postal service ;	To establish post offices and post roads ;
Copyright and patents of invention and discoveries ;	To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ;
A federal supreme court and federal courts ;[1]	To constitute tribunals inferior to the supreme court ;[1]
Census and statistics ;	To take a census or enumeration of the inhabitants every ten years ;
	To provide and maintain a navy ;
Militia, military and naval service and defence ;[2]	To make rules for the government and regulation of the land and naval forces ;
	To provide for organizing, arming and disciplining the militia, the states having the appointment of officers and the authority of training the militia according to the discipline prescribed by congress.
	To call out the militia to execute the laws and suppress insurrections ;
Weights and measures.	
The Territories of Canada ;	To dispose and make all needful laws and regulations respecting the territory or other property belonging to the United States.[3]

The foregoing enumeration is necessarily imperfect inasmuch as it is given simply for purposes of comparison and contains only a part of the powers conferred on the dominion government, which has jurisdiction also over the following subjects :

Sea-coast and inland fisheries ; banks and banking ; legal tender ; navigation and shipping ; beacons, buoys and lighthouses ; criminal law ; marriage and divorce ; penitentiaries ; ferries between provinces, or foreign or British countries.[4]

In the United States, on the other hand, it is laid down by competent authorities that the jurisdiction with respect to the foregoing subjects rests as follows :

Each state controls the fisheries in the public waters in which they are situated.[5]

The states may charter banks of issue, but congress has also power to make treasury notes a legal tender and establish national banks.[6]

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[1] B. N. A. Act, 1867, s. 101. The constitution made the establishment of a Canadian supreme court optional ; the constitution of the U. S. made the court imperative—a branch of government necessary to the existence of the union.

[2] In the enumeration of the powers given to the national government of the United States, it will be seen that while the dominion government has exclusive control over the militia, there is a reserved power in the states over this force. It is a state force until actually called into the service of the union. The federal government, however, is supreme in all that pertains to war with only a subordinate authority in the states. Whenever the president considers that an exigency has arisen to call out the force he is exclusive judge, under the authority of congress, and his requisition upon the executive of the state or upon the militia officers must be observed. Cooley, " Principles of Constitutional Law," pp. 88, 89.

[3] U. S. Constitution, Art. i, ss. 2, 8 ; Art. iv, s. 3. As to the territories see Johnston, "The United States," pp. 81-86.

[4] B. N. A. Act, 1867, s. 91.

[5] Cooley, "Principles of Constitutional Law," p. 189.

[6] "Legal Tender Cases," 12 Wallace, 457. See also Bouvier, 'Law Dictionary,' Art. "National Banks" ; and the 'American Cyclopædia of Political Science,' Art. " Banking ; " and Story, (Cooley's 3rd. ed.), " Constitutional

Marriage and divorce are subjects, which each state regulates according to its own laws, in consequence of which questions are constantly arising out of differences in the law where a marriage or a divorce takes place, and the law where the parties are afterwards found domiciled.[1]

The jurisdiction over the criminal law lies in the several states which have in most cases a common law derived from England, and the enactments of their own legislatures. In the case of all crimes and offences and suits, cognizable under the authority of the United States, federal courts have jurisdiction. These courts find their power to punish crimes in laws of congress passed in pursuance of the constitution. In civil cases as far as practicable they administer for the most part the local law, and apply it as a state court would apply it in a like controversy. The constitution itself provides legal safe-guards and benefits which must be given a person accused of a crime in a state.[2]

The right of navigation in seas, lakes, and public rivers, and the right of fishing in public waters belong to the states under the principle of eminent domain, but navigation, as well as telegraphs, railways and shipping may be regulated under the general power possessed by congress over the regulation of commerce when they are necessary vehicles and means of intercourse between the United States and foreign nations, and between different states.[3]

The ferries that are of a foreign or inter-state character fall within the foregoing principle,—each state, however, regulating the highways and ferries within its own exclusive limits at discretion.

The criminal law and the punishment against offences being under the jurisdiction of the state, the establishment and maintenance of penitentiaries and jails rest obviously with the same authority.

In Canada, the constitution gives the general parliament and the legislatures of the provinces, respectively, full control over their own elections ; and in pursuance of this authority acts have been passed by those bodies, establishing a uniform franchise for the dominion and distinct systems for each province, and giving the Courts the exclusive power of trying cases of controverted elections, and punishing bribery and corruption.[4] Consequently the Dominion and Provinces have different laws on these subjects.

In the United States, each state regulates its own elections and franchise. The constitution has no special provision for the establishment of a uniform franchise for elections to congress, but simply provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature," and that

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Law," ss. 1257-1271, for a review of the interesting constitutional questions arising out of the establishment of national banks, and of the issue of legal tender notes by the United States. Von Holst says, (Constitutional History, p. 122) "whether (and, if so, how far) congress has the power of making the federal currency a legal tender is a question which has formerly, and again quite recently engaged the attention of the people, the politicians, and the courts. But, in spite of the repeated decisions of the supreme court sustaining it, this power is not considered as definitely established, since public opinion looks upon their decisions and their motives, at least in part, as very doubtful."

[1] Cooley, "Principles of Constitutional Law," pp. 180, 229.

[2] Von Holst, "Constitutional Law of the United States," pp. 154, 258; U. S. Constitution, Art. iii, ss. 2, 3; Arts. v, vi, xiii; Cooley, "Principles of Constitutional Law," pp. 131, 292-296.

[3] Cooley, "Constitutional Limitations," pp. 648, 729, 730.

[4] See Bourinot, "Parliamentary Procedure in Canada," chap. ii, ss. iii—x.

"the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, colour, or previous condition of servitude." Representatives to congress are elected in each state under its own franchise subject to this condition. Legislative elections in the states are determined by the body in which the seat is contested. As respects congress, the constitution expressly provides that "each house shall be the judge of the elections, returns and qualifications of its own members." The courts cannot interfere with the conclusions of congress or of the state legislatures in this respect.[1]

The foregoing paragraphs will show that the constitution of the United States does not attempt, like the constitution of Canada, to make a distinct division or close enumeration of the powers of the respective legislative authorities. But before dismissing this part of the subject, I shall in a few paragraphs state the general scope of the legislative powers entrusted to the provincial organizations.

The provinces have the exclusive right to make laws on the following classes of subjects:

The amendment from time to time, notwithstanding anything in this act, of the constitution of the province, except as regards the office of lieutenant-governor.

Direct taxation within the province in order to the raising of a revenue for provincial purposes.

The borrowing of money on the sole credit of the province.

The establishment and tenure of provincial offices, and the appointment and payment of provincial officers.

The management and sale of the public lands belonging to the province, and of the timber and wood thereon.

The establishment, maintenance and management of public and reformatory prisons in and for the province.

The establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the province, other than marine hospitals.

Municipal institutions in the province.

Shop, saloon, tavern and auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes.

Local works and undertakings other than such as are of the following classes:

(*a*). Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

(*b*). Lines of steamships between the province and any British or foreign country;

(*c*). Such works as, although wholly situate within the province, are before or after their execution declared by the parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

The incorporation of companies with provincial objects.

Solemnization of marriage in the province.

Property and civil rights in the province.

The administration of justice in the province, including the constitution, maintenance

[1] U. S. Constitution, Art. i, ss. 2, 5; Art. xv; 'Rev. Stat. U.S.' (1878), ch. 8; Cooley, "Principles of Constitutional Law," p. 262.

and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.

The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this (92) section.

Generally all matters of a merely local or private nature in the province.

Then, in addition to the classes of subjects enumerated in the sections just cited, it is provided that the legislatures of the provinces may exclusively legislate on the subject of education, subject only to the power of the dominion parliament to make remedial laws in case of the infringement of any legal rights enjoyed by any minority in any province at the time of the union—a provision intended to protect the separate schools of the Roman Catholics and the Protestants in the provinces. The Dominion and the Provinces may also concurrently make laws in relation to immigration and agriculture, provided that the act of the province is not repugnant to any act of the dominion parliament.[1]

In the United States, on the other hand, as the constitution provides, whatever powers are not conferred upon the general government, or are not withheld in express terms from the states, belong to the several states or to the people thereof.[2] Each state has full control over its own constitution, and may alter and amend it, provided that such amendment is not repugnant to any provision of the constitution of the union and in accordance with a republican form of government.[3] The law-making power of the state recognizes no restraints, and is bound by none except such as are imposed by the constitution or paramount law.[4] Generally speaking, in the division of powers between the central government and the states, "the larger portion, including nearly all that touched the interests of the people in their ordinary business relations and in their family and social life, were reserved to the states. All that related to the family and the domestic relations, the administration and distribution of estates, the forms of contract and conveyance, the maintenance of peace and order in the states, the punishment of common law offences, the making provision for education, for public highways, for the protection of personal liberty and liberty of worship—all these powers were withheld from the jurisdiction of the federal government and retained by the states."[5]

Both the constitution of Canada and that of the United States can be amended in accordance with certain forms required by law. But Canada, being still a mere dependency, is not sovereign in the legal sense of the term, since it cannot declare war or make treaties, those being powers reserved to the imperial power of England, from which it derives its constitution, and which alone can change that fundamental law. The constitution of the United States places many difficulties in the way of amending that instrument, and in the states the people have to ratify any decision of the convention or legislature that may frame amendments.[6] To-morrow the English parliament might change

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[1] B. N. A. Act., 1867, ss. 92, 93, 95.

[2] U. S. Constitution, Art. x.

[3] U. S. Constitution, Art. iv, s. 4.

[4] Dodge *v.* Woolsey, 18 Howard, 331; Gunn *v.* Barry, 15 Wallace, 610; Pacific Railroad Co. *v.* Maguire, 20 Wallace, 36.

[5] Cooley, "Principles of Constitutional Law," p. 143.

[6] Amendments are made in the same manner as the original constitution, by convention and ratification; or by proposition of congress and ratification by three-fourths of the state legislatures. In the states the same is

or revoke the constitution of Canada just as in 1838 it repealed the statute giving a legislative system to Quebec, then called Lower Canada. Such a thing would be legal, although it is not probable or even possible. The English government never moved in the matter of the present union until the several legislative bodies approached it formally by address, and asked that it should be conceded; and now, should any change be necessary, it would be done only in the same formal manner, through the action of the federal parliament in the first place. The people speak only through their legislative bodies, and such a thing as a plebiscite or a popular convention on any proposed amendment is unknown to the constitution of the Dominion. The federation was brought about by the agency of legislatures which were elected without any reference to this great constitutional change, and it was only in one province, New Brunswick, that the question came directly before the people at the polls. Still, while Canada is in this respect subject to the imperial government and cannot adopt any legislation that is incompatible with imperial enactments or in antagonism to imperial obligations, yet it has sovereign powers within its own constitutional sphere. As in the case of the constitution of the United States, conflicts of authority, despite the care taken to prevent them in the British North America Act, are constantly arising in Canada between the respective legislative jurisdictions, which have to be decided by the courts, and already there are several volumes containing judicial decisions interpreting the law and now practically become part of the constitutional system. There is one federal court, resembling the supreme court of the United States, but there are no federal courts in the provinces as in the states. The courts of the provinces decide on all constitutional cases brought before them, and there is no limitation placed on their jurisdiction over such matters. They do this in the ordinary process of law and not under any special power given them by the constitution. The supreme court of Canada, however, was established for the purpose of acting, as far as possible, as a court of appeal for all the provinces. It is not, however, the ultimate court of appeal for the Dominion, since it is the continual practice of the judicial committee of the privy council of England to entertain appeals from the supreme court when an error of law has been made and substantial interests are involved. Indeed the supreme court can be considered only a general court of appeal for the Dominion itself in a limited sense, since there is in every province the right of appeal from its appellate court to the privy council.[1] But the general sense of the people is tending more and more to make the supreme court, as far as practicable, the ultimate court of appeal in all cases involving constitutional issues, since it is felt that men versed in the constitutional law of Canada and of the United States, and acquainted with the history and the methods of government as well as the political conditions of the country at large, are more likely to meet satisfactorily the difficulties of the cases as they arise than the European judges who are trained to move in the narrow paths of ordinary statutes. A remarkable assertion of the judicial independence of Canada can be seen in the act passed by the parliament of the Dominion in 1888, which enacts that, "notwithstanding

true, except that the proposition is by the legislature or convention, and the ratification is by popular vote. There is no point in the state constitutions in which amendment is forbidden and but one in the federal constitution:— "No state, without its consent, shall be deprived of its equal suffrage in the senate." 'American Cyclopædia of Political Science,' "United States," p. 1005. See U. S. constitution, Art. v.

[1] Cassells, "Practice of the Supreme Court of Canada," p. 4. The Exchequer Court of Canada is federal.

any royal prerogative," no appeal shall be brought in any criminal case from any judgment or order of any court of Canada to any court of appeal or authority by which in the United Kingdom appeals to Her Majesty in Council may be heard.[1]

If we come now to compare the systems of government possessed by the two countries we find that while both rest on the basis of the principles of the British constitution, yet there are very remarkable differences which have grown out of the diverse circumstances under which Canada and the United States adopted their fundamental law.[2] The United States have now, as an executive, a president elected by the people in all the states for a term of four years, on the nomination of a political convention, and removable from office only by a successful impeachment in the senate according to the methods laid down by the fundamental law. He has the right to appoint heads of certain departments to which, collectively, the name of cabinet has been given in the course of time by popular usage although the constitution does not provide for a cabinet in the English constitutional sense of the word. Its position and responsibilities are not in any way equal to those of an English ministry. Its members are not responsible to congress, although they can be called upon to report to that body at any time, and be examined before its committees on matters affecting their respective departments. In reality they are dependent only on the executive who appoints and removes them, and responsible to him alone for the satisfactory performance of their duties.[3] The power given to the president, generally called the " veto," was borrowed from an old prerogative of the Crown, which has now fallen into disuse, and the exercise of it in these times might create a revolution in England ; but at the time of the formation of the constitution it was believed to be necessary as a check

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[1] Dom. Stat., 51 Vict., c. 43. The report of the Canadian minister of justice on this act (which has been allowed) contains a strong assertion of the rights of the Canadian parliament to pass any act affecting the royal prerogative, since that body has, under the British North America Act, jurisdiction over the criminal law, the constitution of a court of appeal for Canada, and the peace, order and good government of the Dominion. In another case which came recently under the review of the imperial government—the Canadian Copyright Act of 1889—which conflicts with imperial legislation on the same subject—the Canadian government takes the ground that the Canadian parliament can legislate on all matters over which it has legislative jurisdiction by sec. 91 of the B. N. A. Act, even if in doing so it repeals an imperial statute applicable to the Dominion, passed previous to 1867, when the imperial parliament gave such large powers to Canada. This legislation is of course subject to the general power of disallowance possessed by the Crown. See Can. Sess. P. for 1889 and 1890 ; " Criminal Law and Copyright ; " Bourinot's " Federal Government in Canada," p. 39 (note.) The decision of the imperial authorities on this interesting question has not yet been made public in Canada.

[2] On this point see Bryce, i. 34–42.

[3] Maine " Popular Government," pp. 212, 213, in comparing the king with the president, shows what is now generally admitted, that the framers of the American constitution had no knowledge of cabinet government in the present sense. " It is tolerably clear . . . . they took the king of Great Britain, went through his powers, and restrained them whenever they appeared to be excessive or unsuited to the circumstances of the United States. It is remarkable that the figure they had before them was not a generalised English king nor an abstract constitutional monarch ; it was no anticipation of Queen Victoria, but George III himself, whom they took for their model . . . . Now the original of the president of the United States is manifestly a treaty-making king and a king actively influencing the executive government. Mr. Bagehot insisted that the great neglected fact in the English political system was the government of England by a committee of the legislature calling themselves the cabinet. This is exactly the method of government to which George III refused to submit, and the framers of the American constitution take George III's view of the kingly office for granted. They give the whole executive government to the president and they do do not permit his ministers to have seat or speech in either branch of the legislature. They limit his power and theirs, not, however, by any contrivance known to modern English constitutionalism, but by making the office of president terminable at intervals of four years." See also Bryce i. 273.

upon the power of congress, and was given to the president as one of the most useful adjuncts of his large authority.[1] On the other hand the governor-general of Canada, who is appointed to represent the queen, the head of the executive in the constitution, does not exercise the veto, although he possesses the legal right to refuse his assent to any bill. Here we have an illustration of the tenacity with which England and her colonies keep to the old forms which have practically fallen into disuse in the practical operation of their constitutional system. This is one of the results of parliamentary government which makes the advisers of the queen or of the governor-general responsible for all legislation. To call upon the governor-general to exercise the veto after a measure has passed both houses would be practically a confession that his advisers did not possess the confidence of the legislature ; it would bring into contempt that principle of ministerial responsibility to parliament which is the very essence and life of parliamentary government.[2] It is a curious thing, however, that some lieutenant-governors of the provinces, in all of which parliamentary government exists in the full sense of the term, have more than once exercised the veto in the case of clearly unconstitutional legislation, but this has been done only in the smaller provinces, and it would be impossible to have it occur in the larger arena of the Dominion or of the imperial State. One explanation of the exercise of it in the small provinces is that the lieutenant-governors are, in a manner, officers of the dominion government, and may assume to exercise the veto in cases where there is a clear infraction of the federal authority, but this is hardly a sufficient reason in the face of the fact that the coustitution plainly provides for reserving such legislation for the consideration of the dominion government itself, which should alone consider its effect and bearing, and disallow it, if necessary, under the fundamental law giving them such a power.[3] For, whilst there exists in the Crown of England a general power of disallowing any acts passed by the parliament of the Dominion, the imperial government has given to the governor-general-in-council the right to review all the acts passed by the several provincial legislatures, and to disallow them for good and sufficient reasons.[4] That is to say, the general government now occupies towards the provincial legislatures the same relation which the imperial government formerly held towards the provinces before they became parts of the federation. The exercise of this power has given rise to some controversies between the Dominion and the Provinces on account of the general government having considered it expedient in the public interests to disallow acts which were believed to be within the constitutional jurisdiction of the legislatures that passed them. The British North America Act does not limit the exercise of the power. The dominion government may disallow, not only an act which is unconstitutional in whole or in part, but also one that is quite within the competency of the legislature, but is at the same time regarded as injurious on grounds of public policy. Consequently a power, essentially sovereign in its nature, is to be used with great caution, since there is a disposition in all the provinces to resent and oppose obstinately any interference with what is believed to be a legal right under the constitution. The exercise of the veto may have its uses in restraining hasty and unconstitutional legislation, or in cases involving

[1] See Bryce, i. 71 *et seq.* Queen Anne's veto in 1707 of a Scotch militia bill was the last example in England of the exercise of the power. The veto of the president is really an exercise of *legislative* authority.

[2] See Bourinot, "Parliamentary Procedure in Canada," p. 581.

[3] Ibid., pp. 580-582.

[4] B. N. A. Act, 1867, ss. 56, 90.

the peace, integrity and security of the confederation, on which there is a consensus of opinion to support the central government. The principle, however, appears now generally laid down by the leading statesmen and lawyers of both political parties in Canada, that the wisest policy is not to interfere with any legislation which is clearly within the constitutional rights of the province and does not affect the harmony and vital interests of the confederation as a whole. As a rule the safest practice is to leave the courts to act as the arbiter, as far as practicable, in all cases of constitutional controversy. The exercise of such power by a political body has obviously its dangers in a federation composed of several provinces, jealous of their constitutional rights, anxious to preserve their local autonomy, and looking with distrust on every attempt to interfere with their legislative authority.[1]

The experience of Canada since 1867 proves quite conclusively that there is in the Dominion, as necessarily in all countries united by the federal principle, a tendency to friction between the national and the provincial governments arising out of the distribution of powers. The doctrine of state sovereignty is at times pressed to undue limits in Canada, as was the case for the greater part of a century in the United States. Happily for the Canadian federation there is no great social institution like slavery to complicate the political situation and give a fictitious strength for a while to the advocates of state rights. Still the presence of a large community speaking the French language and possessing institutions differing in essential respects from those of the majority of the people of Canada, is one of the strong reasons for the constant assertion of provincial rights, apart altogether from the fact that such an assertion must always more or less exist in any system of federal government. Mr. Dicey[2] has stated with much force that the sentiment "which animates a federal state is the prevalence throughout the citizens of more or less allied countries of two feelings which are to a certain extent inconsistent—the desire for national unity and the determination to maintain the independence of each man's separate estate." This is as true of Canada as it was of the United States before the war of rebellion, the result of which in the republic has been to strengthen the central government and to make the doctrine of state sovereignty practically a dead issue. Notwithstanding the great care taken by the draftsmen of the Canadian constitution to draw the lines of division rigidly between the respective authorities of the Dominion, cases of conflict are inevitable. The danger in such a system lies in the indiscretions of politicians—in the provinces especially—and the safety in the legal foundation of the constitution, and in that respect for law which exists in communities governed by the principles of English jurisprudence and working out their future on the basis of British government. The perpetuation of the Canadian constitution and the harmony of the members of the confederation rest in a large measure on the judiciary of Canada just as the constitution of the United States owes its strength to the legal acumen and sagacity of a great constitutional lawyer like Chief Justice Marshall, and of the able men who have, as a rule, composed the federal judiciary. The instinct of self-preservation and the necessity of national union must, in critical times, prevail over purely sectional considerations even under a federal system, as the experience of the United States has conclusively shown us; but as

[1] See Bourinot's "Federal Government in Canada," pp. 58–62.

[2] "Law of the Constitution," 3d ed., p. 133.

a general principle the success of confederation must rest on the spirit of compromise and in the readiness of the people to accept the decisions of the courts as final and conclusive on every constitutional issue of importance.

In another brief summary I can, perhaps, best show the important distinctions between the respective systems of government, of the two countries. The American federal republic is governed by the following authorities :

A president elected by the people in the several states for four years; irremovable except for impeachment; exercising, among the most important of his powers, the right to refuse to approve of bills passed by the two houses, which can only over-ride his decision by a majority of two-thirds in each body; having the power to remit fines, reprieve and pardon for offences against the United States, except in cases of impeachment; having the right to make treaties and appoint public officials, subject to the ratification and confirmation of the senate. [1]

A vice-president, elected also for four years, but performing no official duties except as president of the senate where he only votes in case of an equal division; acts as head of the executive in case of the removal, death, resignation or disability of the president. [2]

A cabinet, popularly so called, consisting, strictly speaking, of heads of eight executive departments, without seats in congress; appointed by, and responsible to the president, and without control over congressional legislation. [3]

A congress composed of two houses—a senate and a house of representatives—called together at fixed dates under the constitution, but liable to be convened on extraordinary occasions by the president; not to be dissolved by the executive. The senate is elected for six years, not by the people directly, but by the legislatures of the states, which are equally represented, one-third being removed or changed every two years; having co-ordinate powers of legislation with the house of representatives except as to the initiation of revenue bills, which, however, they can amend; having the right to ratify treaties presented by the president and to confirm nominations to office made by the executive. The house of representatives [4] is composed of 332 members, (and of three delegates, who have

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[1] Constitution of the U. S., Art. i, s. 7., Art ii. The name of president was adopted from the title used instead of governor in Delaware, New Hampshire, Pennsylvania and South Carolina.

[2] U. S. Const., Art. i, s. 3; Art ii., ss. 1, 4. By an Act of 1886 provision is made, failing both president and vice-president, that the duties of the office of president shall devolve on the secretary of state, and after him, in the order of their rank, on the other officers of the cabinet. See Fiske, "Civil Government," p. 229.

[3] The constitution does not provide for the appointment of heads of departments, though it gives the president the power (Art. 2, s. 2.) "to require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." Congress has since 1789 organised eight departments, with following heads: secretary of state, secretary of the treasury, secretary of war, attorney-general, secretary of the navy, postmaster-general, secretary of the interior, and secretary of agriculture. Art. xi, s. 6. prevents any of these ministers or any person "holding any office under the United States" from sitting in either house during their continuance in office. "The constitution," says Van Holst, p. 90, "knows nothing of a 'cabinet.' Even if the word has become as thoroughly naturalized in the language of America as in European states, it is nevertheless, from a constitutional standpoint, an abuse. The constitution speaks only of 'executive departments.' It does not call the heads of them 'ministers.' It generally gives them no titles. By statute the name 'secretary' is given them. Collectively, the secretaries have no constitutional existence whatever."

[4] U. S. Const., Art. i; Art. ii., s. 2; Art. v., etc. Professor Johnston, in the 'Princeton Review' for September, 1887, has shown that at the time the convention framed the constitution of the national government "the name

no votes, from the territories),[1] chosen every second year by the people of the several states; elected under the same franchises which elect members to the popular house of the state legislatures.

A federal judiciary composed of a supreme court of nine members, of nine circuit courts, of fifty-eight district judges and of a court of claims; all appointed by the president with the advice and consent of the senate; removable only for cause assigned and subject to impeachment.[2]

A civil service composed of officers of various grades appointed by the president, whose nominations, in certain cases, require to be ratified by the senate, the tenure of office being still uncertain in consequence of the political difficulties that stand in the way of carrying out the Pendleton Act, which was the first practical move in the direction of a wise reform.[3]

In conformity with the provisions of the British North America Act and those unwritten conventions of the British constitution which have practically the force of law, the legal and constitutional agencies of government in the Dominion may be defined as follows:—

The queen, in whom is legally vested the executive authority, in whose name all commissions to office run; by whose authority parliament is called together and dissolved; and in whose name bills are assented to or reserved. She is represented, for all purposes of government, by a governor-general, appointed by her majesty in council and holding office during pleasure; responsible to the imperial government as an imperial officer;

'senate' was used for the upper house in Maryland, Massachusetts, New York, North Carolina, New Hampshire, South Carolina, and Virginia; and the name 'house of representatives,' for the lower house, was in use in Massachusetts, New Hampshire, and South Carolina, as well as in Pennsylvania and Vermont." Much interesting information as to the modeling of the provisions of the national government upon the state constitutions will be found in this thoughtful paper of a scholar, who died at an early age, before he had even reached the maturity of his powers.

[1] Canada gives complete representation to her Territories in both the senate and commons.

[2] U. S. Const. Art. i, s. 8; Art. 3; Art. xi. The inferior courts to be provided for under the constitution, were established by the judiciary Act of 1789." The supreme court of the United States," says Maine, "Popular Govt.," p. 217, "is not only a most interesting but a virtually unique creation of the founders of the constitution." But Bryce has clearly shown (Vol. i., chap. 23) that "when the constitution of the United States came into operation in 1789, and was declared to be paramount to all state constitutions and state statutes, no new principle was introduced; there was merely a new application, as between the nation and the states, of the old doctrine that a subordinate and limited legislature cannot pass beyond the limits fixed for it." The statutes of the old colonies could be declared invalid by the queen's privy council, whenever they were in excess of the powers granted under the old charters. The same thing happens as to Canada and other dependencies in these times. Mr. Bryce points out that in 1786, in the case of Trevett v. Weeden, the supreme court of Rhode Island declared a statute of the state legislature invalid on this ground. It was clear to the framers of the constitution that a federal court, to adjudicate upon all conflicts of authority between the central and the state governments, was an absolute necessity.

Since the foregoing note was in print, I have read an able article in the Political Science Quarterly for June, by Dr. Charles B. Elliott on the Legislatures and Courts; in which he gives much new information bearing on this point. He shows that several writers, Cooley and Bryce among them, are in error in citing the case mentioned above as the first in which the courts held an act of the legislature void on the ground of conflict with the fundamental law. As a matter of fact the "action was dismissed for want of jurisdiction, and the constitutional question was not decided." The case of Holmes v. Walton, argued on constitutional grounds in the supreme court of New Jersey, during November 1779, antedates all others, as it was decided in September, 1780. Chief Justice Brealey of New Jersey was a member of the convention of 1787.

[3] See Von Holst, p. 208 and *note*, for the general features of the Pendleton bill.

having the right to pardon for all offences, but exercising this and all executive powers under the advice and consent of a responsible ministry.[1]

A ministry composed of thirteen or more members of a privy council ;[2] having seats in the two houses of parliament; holding office only whilst in a majority in the popular branch; acting as a council of advice to the governor-general; responsible to parliament for all legislation and administration.

A senate composed of seventy-eight members appointed by the Crown for life from the provinces and territories, though removable by the house itself for bankruptcy or crime; having co-ordinate powers of legislation with the house of commons, except in the case of money or tax bills, which it can neither initiate nor amend; having no power to try impeachments; having the same privileges, immunities and powers as the English house of commons, when defined by law.[3]

A house of commons of two hundred and fifteen members, elected for five years on a very liberal dominion franchise, in electoral districts fixed by law in each province and in the territories ;[4] liable to be prorogued and dissolved at any time by the governor-general, on the advice of his council; having alone the right to initiate money or tax bills; having the same privileges, immunities and powers as the English house of commons.[5]

A dominion judiciary, known as a supreme court, composed of a chief justice and five puisne judges, acting as a court of appeal for all the provincial courts; subject to have its decisions reversed on appeal to the judicial committee of the queen's privy council in England ; irremovable except for cause on the address of the two houses to the governor-general. [6]

A civil service, appointed by the governor-general on the advice of his council, that is practically of the government of the day; irremovable except for cause; governed by statutes providing in specified cases for examinations and promotions; certain important positions being still political appointments, but not subject to removal in case of change of parties.[7]

Coming now to the state and provincial organizations, we find that in the several States, generally speaking, the government is distributed as follows :—[8]

A governor elected directly by the people for a term of office, varying from four years to one, and exercising in all the states, except four, a veto over the acts of the legislature,

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[1] B. N. A. Act, 1867, ss. 9, 10, 12, 13, 14, 15. [2] Ib., s. 11.

[3] B. N. A. Act, 1867, ss. 21-36, 39.

[4] 'Rev. Stat. of Canada,' c. 50. The representatives from the North-West territories have the full privileges of members of both houses.

[5] Ib. ss. 37-39, 44-52. In the Quebec resolution of 1864 (No. 6), the lower house of the proposed federal parliament is called house of commons, but the upper house is styled legislative council. It was only when the B. N. A. Act of 1867 came to be drafted in London that it was deemed expedient to copy the example of the United States and adopt the more dignified title of 'senate.' It was necesary to make a distinction between the upper house of the parliamant, and that of the provincial legislatures.

[6] B. N A. Act, ss. 98, 101 ; Dom. Stat., 38 Vict., c. 11, 'Rev. Stat. of Canada,' c. 137. By Dom. Stat. 50-51 Vict., c. 16, the exchequer court jurisdiction was taken from the supreme court and given to a distinct court, composed of one judge. Appeals are allowed to the supreme court under certain limitations.

[7] See Bourinot, "Federal Government in Canada," pp. 118-120; and 'Rev. Stat. of Canada,' c. 18.

[8] For details of the state governments, it is necessary to refer to 'American Cyclopædia of Political Science,' Art. "United States" Bryce, vol. ii, chapters 22, 40, 41, 42; and Woodrow Wilson, "The State," ss. 885-994.

which, however, can over-ride his determination by a majority varying in the different states Four states place all legislative authority in the legislature alone. Generally in the state, the governor has the pardoning power within certain limitations.

A lieutenant-governor in nearly all the states, elected by the people of the state at the same time as the governor; exercising no special functions except what arise from his position as a presiding officer of the senate; filling the place of the governor in case of death or incapacity.

Executive councils in only three states,[1] which practically represent an advisory cabinet; in the others there are certain executive officials elected by the people for terms, varying in the different states, having no seats in the legislature and not exercising any control over its legislation.

A legislature composed of two houses in every state of the union. First, a senate chosen by popular vote, generally in districts larger than those of the house; having a term varying from four years in the majority of cases, in others from three to one, half of the members in most cases going out on the completion of their two or four years' term and a new half being chosen. In all the states except one, it is a tribunal of impeachment for certain officials, including governors. Secondly, a house of representatives, or an assembly or house of delegates in a few states, chosen by popular vote in the state, generally manhood suffrage, only limited by certain disqualifications of crime or bribery, the number varying from 21 to 321.[2] Both houses have equal rights of legislation except that the house of representatives in certain states can alone originate money bills.

A civil service, small in numbers and poorly paid, elected by the people generally, holding their positions on the uncertain tenure of political success and popular caprice.

The several authorities of government in the Provinces may be briefly distributed as follows:—

A lieutenant-governor, appointed by the governor-general in council, practically for five years; removable by the same authority for cause, exercising all the powers and responsibilities of a head of the executive under the system of responsible or parliamentary government; having no right to reprieve or pardon criminals.[3]

An executive council in each province, composed of certain heads of departments; and varying from five to ten in number; called to office by the lieutenant-governor; having seats in either branch of the legislature; holding their positions as long as they retain the confidence of the majority of the people's representatives, responsible for and directing legislation; conducting generally the administration of public affairs, in accordance with the law and conventions of the constitution.[4]

A legislature composed of two houses, a legislative council and an assembly in four provinces, and of only an assembly, or elected house in three provinces. The legislative

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[1] Massachusetts, Maine and North Carolina.

[2] New Hampshire, though one of the smallest states, has the largest number of representatives. Delaware with 21, is fairly represented.

[3] B. N. A. Act. 1867. ss. 58–62, 66, 67. By the Quebec resolutions of 1864 (No. 44) he was to have this power, but it was not incorporated in the B. N. A. Act, after consultation with the imperial authorities. As previously shown the central executive alone can exercise the prerogative of mercy.

[4] B. N. A. Act, 1867, ss, 63–66.

councillors are appointed for life by the lieutenant-governor in council, removable for same reasons as senators, must have a property qualification, except in Prince Edward Island, where the upper house is elective; cannot initiate money or tax bills, but otherwise have all powers of legislation; cannot sit as courts of impeachment. The legislative assemblies are elected for four years in all cases except in Quebec, where the term is five; liable to be dissolved at any time by the lieutenant-governor, acting under the advice of his council; elected on a franchise, manhood suffrage in Ontario and Prince Edward Island, and of a very liberal character in the other sections.[1]

A judiciary in each of the provinces, appointed by the governor-general in council; only removable on the address of the two houses of the dominion parliament.[2]

A civil service, appointed by the lieutenant-governor in council; nominees, in the first instance of the political party in power, but once appointed, irremovable, except for sufficient reasons.

In the United States the executive exercises no direct control over the legislature through a cabinet, and, if it were not for the veto, congress would be practically uncontrolled in its legislation. In Canada, on the other hand, the executive is practically the cabinet or ministry, who direct and supervise all legislation as well as the administration of public affairs. In the United States, when the constitution was formed, parliamentary government, as it is now established in England and her self-governing dependencies, was not understood in its complete significance; and this is not strange when we consider that in those days the king appeared all powerful—he did not merely reign but governed—and his councillors were so many advisers, always ready to obey his wishes. Ministerial responsibility to parliament was still, relatively speaking, an experiment in constitutional government, its leading principles having been first outlined in the days of William the Third. The framers of the American constitution saw only two prominent powers, the king and the parliament, and their object was to impose a system of checks and balances which would restrain the authority of each and prevent any one dominating in the nation. It is true, in the course of time, this system has become in a measure ideal since congress has practically established a supremacy, though the powerful influence exercised by the president at times can be seen from the great number of vetoes successfully given by Mr. Cleveland. In Canada responsible or parliamentary government dates back to less than half a century ago, and was won only after years of contest with the parent state. Since the British system has been introduced into the provinces of the Dominion there has been practically no friction between the different branches of government, but the wheels of the political machinery run with ease and safety.

The comparisons that have been drawn with such singular ability by Mr. Bagehot,[3] Professor Woodrow Wilson and Professor Bryce, between the systems of congressional

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[1] B. N. A. Act, 1867, ss. 69–90. [2] Ib. ss. 96–100.

[3] Bagehot, in "The English Constitution," was the first eminent writer to show the weaknesses of the United States system compared with that of England, especially in his first chapter on the cabinet. Woodrow Wilson, in his "Congressional Government," has, in a very practical, common sense way, followed in the same line of argument. Mr. Bryce, in "The American Commonwealth," also clearly sees the defects of the constitutional system arising out of the absence of a cabinet responsible to congress. The latest noteworthy accession to the ranks of these critics is Mr. Hannis Taylor, whose constitutional work has been quoted in these papers more than once, and who, in a recent contribution to the 'Atlantic Monthly' (June, 1890), has shown that every thoughtful writer must come to the same conclusions that Bagehot worked out many years ago. See also Story's Com. sec. 869.

and parliamentary government, show clearly in favour of the English system, and it is not necessary that I should do more than refer as briefly as possible to the subject. Under the American system the executive and legislative authorities may be constantly at variance, and there is little possibility, on all occasions, of that harmonious and united action which is necessary to effective government. The president may strongly recommend certain changes in the tariff, or in other matters of wide public import, but unless there is, in the houses, a decided majority of the same political opinions as his own, there is little prospect of his recommendations being carried out. Indeed, if there is such a majority, it is quite possible that his views are not in entire accord with all sections of his party, and the leading men of that party in congress may be themselves looking to a presidential succession, and may not be prepared to strengthen the position of the existing incumbent of the executive chair. Individual members of the cabinet can and do give information to congress and its committees on matters relating to their respective departments, but they are powerless to initiate or promote important legislation directly, and if they succeed in having bills passed it is only through the agency of and after many interviews with the chairman of the committees having control of such matters. If congress wishes for information from day to day on public matters, it can only obtain it by the inconvenient method of communicating by messages with the departments.[1] No minister is present to explain, in a minute or two, some interesting question on which the public wishes to receive immediate information, or to state the views of the administration on some matter of public policy. . There is no leader present to whom the whole party looks for guidance in the conduct of public affairs. The president, it is true, is elected by the republican or democratic party, as the case may be, but the moment he becomes the executive he is practically powerless to promote effectively the views of the people who elected him, through the instrumentality of ministers who speak his opinions authoritatively on the floor of congress. His messages are generally so many words, forgotten too often as soon as they have been read. His influence, constitutionally, is negative—the veto—not the all important one of initiating and directing legislation like a premier of Canada. The committees of congress, which are the governing bodies, may stifle the most useful legislation, while the house itself is able, through its too rigid rules, only to give a modicum of time to the consideration of public measures, except they happen to be money or revenue bills. The speaker himself is the leader of his party, so far as he has influence over the composition of the committees, but he cannot directly initiate or control legislation.[2] Under all the circumstances, it is easy to understand that when the executive

[1] So astute an observer of the working of political institutions as M. E. Boutmy, of the Ecole Libre des Sciences Politiques of Paris, has well observed on this point:—"Le président et ses conseillers ne communiquent avec les chambres que par des messages et des comptes rendus écrits. Le président, dit le texte (de la constitution) peut adresser de temps en temps au congrès des informations et appeler son attention sur les mesures nécessaires ou utiles. Mais ces propositions ou plutôt ces motions, ni le président, ni les ministres ne peuvent les suivre dans l'enceinte des chambres, les convertir en bills formels, les soutenir avec l'autorité qui s'attache à la parole d'un gouvernement responsable, dissiper les malentendus, écarter les amendments qui vont contre le but de la loi, modifier eux-mêmes le texte au cours du débat selon les impressions qui se font jour dans l' assemblée. Toutes ces conditions d'un travail législatif mûri, judicieux, conséquent, leur sont refusées. Ils ne peuvent se faire entendre qu'à la cantonade." "Etudes de Droit Constitutionnel," pp. 132, 133.

[2] A system which practically brings even the speaker into the political arena as in congress, weakens his authority and tends to make his decisions of relatively little weight. Mr. Speaker Reed appears to have recently proved the truth of this assertion.

is not immediately responsible for legislation, and there is no section or committee of the house bound to initiate and direct it, it must be too often ill-digested, defective in essential respects, and ill-adapted to the public necessities. On this point a judicious writer says "this absence of responsibility as to public legislation, and the promotion of such legislation exclusively by individual action, have created a degree of mischief quite beyond computation." And again, "there is not a state in the union in which the complaint is not well grounded, that the laws passed by the legislative bodies are slipshod in expression, are inharmonious in their nature, are not subjected to proper revision before their passage, are hurriedly passed, and impose upon the governors of states a duty not intended originally to be exercised by them, that of using the veto power in lieu of a board of revision for the legislative body; and so badly is the gubernatorial office organized for any such purpose, that the best intentioned governor is compelled to permit annually a vast body of legislation to be put upon the statute book which is either unnecessary, in conflict with laws not intended to be interfered with, or passed for some sinister and personal ends." [1]

Compare this state of things with the machinery of administration in the Dominion and we must at once see that the results should be greatly to the advantage of Canada. Long before parliament is called together by proclamation from the governor-general, there are frequent cabinet meetings held for the purpose of considering the matters to be submitted to that body. Each minister, in due order, brings before his colleagues the measures that he considers necessary for the efficient administration of his department. Changes in the tariff are carefully discussed and all other matters of public policy that require legislation in order to meet the public demands. Bills that are to be presented to parliament are drafted by competent draughtsmen under the direction of the department they affect, and having been confidentially printed are submitted to the whole cabinet where they are revised, and fully discussed, in all cases involving large considerations of public policy. The governor-general does not sit in executive session with his cabinet, but is kept accurately informed by the premier of all matters which require his consent or signature. When parliament meets he reads to the two houses a speech, containing only a few paragraphs, but still outlining with sufficient clearness, the principal measures that the government intend to introduce in the course of the session. The minister in charge of a particular measure presents it with such remarks as are intended to show its purport. Then it is printed in the two languages, and when it comes up for a second reading, a debate takes place on the principle, and the government are able to ascertain the views of the house generally on the question. Sufficient time is generally given between important stages of measures of large public import to ascertain the feeling of the country. In case of measures affecting the tariff, insolvency, banking and the financial or commercial interests of the Dominion, the bills are printed in large numbers so as to allow leading men in the important centres to understand their details. In committee of the whole the bill is discussed clause by clause, and days will frequently elapse before a bill gets through this crucial stage. Then after it is reported from committee, it will often be reprinted if there are material amendments. When the house has the bill again before it, further amendments may be made. Even on the third reading it may be fully debated and

[1] 'American Cyclopœdia of Political Science,' under head of "Legislation," p. 754.

referred back to committee of the whole for additional changes. At no stage of its progress is there any limitation of debate in the Canadian house. At the various readings a man may speak only once on the same question, but there is no limit to the length of his speech, except what good taste and the patience of the house impose upon him. In committee there is no limit to the number of speeches on any part of the bill, but as a matter of fact the remarks are generally short and practical, unless there should be a bill under consideration to which there is a violent party antagonism, and a disposition is shown to speak against time and weary the government into making concessions or even withdrawing the objectionable features of the measure. After the bill has passed the house it has to undergo the ordeal of the senate and pass through similar stages, but this is not, as a rule, a very difficult matter as the upper house is generally very reluctant to make any modifications in government measures. If the bill is amended, the amendments must be considered by the house, which may be an occasion for further debate. Then having passed the two houses it receives the assent of the governor-general and becomes law. Under modern constitutional usage he does not refuse his assent to a measure which may immediately affect imperial interests and obligations, but simply "reserves" it for the consideration of the imperial authorities, who must, within two years, allow or disallow it, in conformity with statute. If the government should be unable to pass a bill of their own, involving great questions of public policy, it would be their duty to resign, and another ministry would be called upon to direct the administration of public affairs, or they might ask for a dissolution, and an appeal to the people on the question at issue. At any rate, the people make their influence felt all the while in the progress of legislation. It is not as in congress where the debates are relatively unimportant, and not fully reported in the public press, and bills find their fate in secret committees. As the press of Canada is fully alive to the progress of every public measure, and all important discussions find their way from one end of the country to the other, every opportunity is given for a full expression of public opinion, by means of petitions, public meetings and representations to the members of each constituency. The government feel the full sense of their responsibility all the while, for on the popularity of their measures depends their political existence. An unfavourable vote in the house may at any moment send them back to the people.[1]

In the case of other public measures, which are not initiated by themselves, the government exercise a careful supervision, and no bill is allowed to become law unless it meets with their approval. The same scrutiny is exercised over private or local legis-

[1] "The distinguishing quality of parliamentary government is, that in each stage of a public transaction there is a discussion; that the public assist at this discussion; that it can, through parliament, turn out an administration which is not doing as it likes, and can put in an administration which will do as it likes. But the characteristic of a presidential government is, in a multitude of cases, that there is no such discussion; that when there is a discussion the fate of government does not turn upon it, and, therefore, the people do not attend to it; that upon the whole the administration itself is pretty much doing as it likes, and neglecting as it likes, subject always to the check that it must not too much offend the mass of the nation. The nation commonly does not attend, but if by gigantic blunders you make it attend, it will remember it and turn you out when its time comes; it will show you that your power is short, and so on the instant weaken that power; it will make your present life in office unbearable and uncomfortable by the hundred modes in which a free people can, without ceasing, act upon the rulers which it elected yesterday, and will have to reject or re-elect to-morrow." Bagehot, pp. 55, 56. See also the opinions of M. Boutmy to the same effect, pp. 154, 156.

lation, that is, bills asking for the incorporation of banking, railway, insurance and other companies, and for numerous objects affecting private and public interests in every community. This class of bills falls under the denomination of local or private as distinguished from those involving questions of general or public policy. In the United States congress and state legislatures the absence of a methodical supervision by responsible or official authorities has led to grave abuses in connection with such legislation. The "lobby" [1] has been able to exercise its baneful influence in a way that would not be possible in Canada, where, as in England, there is a responsible ministry in parliament and there are rules governing the introduction and passage of such legislation, with the view of protecting the public and at the same time giving full information to all interests that may be affected, and enabling them to be represented before the legislative committees. We are told on the same authority from which I have already quoted, that "the influence of the lobby has proved so formidable an evil that many states of the union, have within a decade, by acts of constitutional conventions or by regular amendments to their organic law, prevented their legislative bodies from enacting special laws in a variety of cases." "But" it is truthfully added, "the limitation of the power to enact private or special legislation has created in its turn an evil far greater than that which it was intended to stay." The result is that the whole body of general legislation "is thrown into the arena of special interests, to be changed, modified, or destroyed as special interests may dictate." [2]

In Canada there are general laws respecting railways, banking and other general interests, and companies seeking incorporation must conform to them. The changing of a general law to meet a special case is carefully avoided. As in the parent state there are special rules methodizing private legislation, and bringing it under strict legislative control. In the case of railway charters, common of late years, there are "model bills" which every company must follow. If any persons wish to obtain a charter for a private or local object, a railway, a bank, or a toll bridge or other matter involving local interests and private gain,—they must first of all give due notice of their intention in the official Gazette, and in the papers of the locality interested, two months before the bill can be introduced. The time is limited when such matters can be brought up in

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[1] The permanent professional staff of lobbyists at Washington is of course recruited from time to time by persons interested in some particular enterprise, who combine with one, two, or more professionals in trying to push it through. Thus there are at Washington, says Mr. Spofford, "pension lobbyists, tariff lobbyists, steamship lobbyists, railway lobbyists, Indian ring lobbyists, river and harbour lobbyists, mining lobbyists, bank lobbyists, mail contract lobbyists, war damage lobbyists, back pay and bounty lobbyists, Isthmus canal lobbyists, public building lobbyists, state claims lobbyists, cotton tax lobbyists, and French spoliations lobbyists. Of the office-seeking lobbyists at Washington it may be said that their name is legion. There are even artist lobbyists, bent upon wheedling congress into buying bad paintings and worse sculptures; and too frequently with success. At times in our history there has been a British lobby, with the most genteel accompaniments, devoted to watching legislation affecting the great importing and shipping interests. The phrase one often hears, 'there was a strong lobby' (*i.e.* for or against such and such a bill) denotes that the interests and influences represented were numerous and powerful." See Bryce, vol. i, appendix B. Of course in a country with parliamentary government like Canada, ministers are exposed to strong influences at critical times, and weak men may yield under the pressure of their supporters in the legislature, but they are ever exposed to the criticism of the houses, and obliged to defend themselves before the public. The ministry is responsible for all governmental action and all legislation, and the "lobby" cannot corrupt a whole government.

[2] See on this subject Bryce, vol. ii, chap. 45.

the legislature. Petitions must be presented within a certain time, stating the nature of the application to the legislative branches, and when they have been received they are referred to a committee which investigates their contents and finds whether the rules respecting notice have been complied with. If the committee report favourably, then a bill, which must be first printed in the two languages, is introduced, and after its second reading, when the principle may be discussed, if necessary—a formality however not generally followed in the case of private bills—it is sent to a select committee having jurisdiction over this class of measures. Before it can be considered in this committee all fees must be paid to the accountant of the house. Then after due notice of a week and more has been given of the consideration of the bill in committee, it is taken up and fully discussed. All parties interested may now appear by themselves or counsel, and oppose or support the measure. Here the committee acts in a judicial capacity, and hears testimony when necessary. Ministers of the Crown have seats on these private bill committees, to watch over the public interests, for they never act as promoters of such bills. If the bill passes successfully through this ordeal, it comes again before the house for consideration in committee of the whole. At this stage and on the third reading amendments may be proposed, after notice has been given of their nature. When it has passed the house where it originated, it is subject again to a similar course of procedure in the other branch, and hardly a session passes but a private bill, which has evoked strong opposition, is thrown out at the last stages. From the initiation to the passage of the bill, it is subject to the scrutiny of the legal officers of the department, whose duty it is, at the last, to revise and print it as it has passed. The lobby, as it is known in the United States, is not heard of, though there may be, at critical times, much canvassing among members by those interested in a particular measure. The committees are so large—some of them two-thirds of the whole house[1]—that a lobbyist finds it practically useless to pursue his arts. Happily for the reputation of the country, the Canadian legislative assemblies still stand much higher than some legislatures in the United States and it will be an unfortunate day for Canada when men in parliament forget the high responsibilities that devolve upon them. A representative of the people should always regard his position as a trust to be kept and used for the sole use of the people.

But it is not merely to the machinery of administration and legislation that Canadians direct the attention of their neighbours. The various statutes which regulate the election of members also seem well calculated to subserve political morality. In Canada what is generally known as the Australian system of voting has been in force for many years and has worked to the advantage of the public interests.[2]

[1] The committees of congress—41 in the senate and 54 in the house—vary in number from 3 to 11 in the upper house and from 3 to 16 in the lower house. In the dominion commons the committees entrusted with private bills vary from 43 to 162—that for railways being the largest and necessarily the most important in a country where there has been for years great enterprise in railway construction.

[2] Canadians have a natural pride in acknowledging the great ability and practical sense exhibited by their co-workers in government in the Australian dependencies. In a previous paper I have already shown that Canada is indebted to South Australia for the admirable Torrens' system of land transfer which is working so satisfactorily wherever it has been introduced. It is to Victoria that the credit must be given for having first introduced the ballot system in 1856, though Mr. Dutton, appears to have moved in the matter in South Australia as far back as 1851, and succeeded in passing a measure in the session of 1857-58. Since then the system has been established in the Australian colonies generally, in England (1872), in the dominion of Canada (1874), and in

Any number of candidates can be nominated on a day appointed by the government, by a certain number of electors, and on the payment of a fee which will be forfeited in case a candidate does not poll a specified vote on polling day. The returning officer appoints his deputies in the various polling districts. The government prints and controls the distribution of all ballot papers, which are prepared in the form required by statute. When a voter goes to deposit his vote, the officer in charge looks at the registration book to see if he is on the official list; and that being so the officer initials the back of the ballot paper and on the counterfoil of the same places a number corresponding to that placed opposite the voter's name on the poll-book. The voter retires into a compartment to which only one person at a time has access, and there places a cross opsite the name of the person or persons for whom he wishes to vote; he then folds up the ballot paper, so as to conceal his vote, and when he hands it to the officer the latter notes his initials placed on the back, to identify the paper, and detaches and destroys the counterfoil, which prevents the vote of the elector being ever made public. The officer immediately, and in the presence of the elector, places the ballot paper in a box made under the orders of the government for such a purpose. These boxes are opened and the votes duly counted as provided by law, and the ballot papers are returned, except in case of a recount by the county judge, within a certain number of days, to the clerk of the Crown in chancery. A similar procedure is pursued in the case of the provincial and municipal elections generally, throughout the dominion. If an election has been duly announced in the official gazette by the Crown officer, it is still open to the defeated candidate or any other person to contest the election in the courts on the ground of bribery or corruption. Since 1873 the legislative bodies have divested themselves of the privilege of trying controverted elections, and consequently subserved the cause of justice and purity. The advantages of the whole system over the American practice are so obvious that several states have already adopted the Australian law, and it is now being earnestly urged in other sections of the union. [1]

When we come to sum up the results of the comparisons that I have been briefly making between the political systems of the two countries, I think Canadians may fairly claim that they possess institutions worthy the study and imitation of their neighbours. We acknowledge that in the constitution of the upper houses, in the existence of the political veto, in the financial dependence of the provinces to a large extent on the dominion exchequer, there is room for doubt whether the constitution of Canada does not exhibit elements of weakness. [2] The senate of the United States is a body of

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many states of the American republic within a very recent period. With such eminent men at the head of affairs in the past and present as Sir Henry Parkes, Mr. Wentworth, Mr. Boucaut, Mr. Gillies, Mr. Service, and many others of no less note, Australia has been well able to keep up with the political progress of the day, and in certain respects, be even in advance of other and much older communities. Canada, however, can point to her system of federation as an example for the imitation of Australia.

[1] The states which have adopted the system are, Massachusetts, Indiana, Minnesota, Missouri, Montana, Rhode Island, Tennessee, and Wisconsin. An agitation, led by the best men, is now going on throughout the Union for a general adoption of the system, and there is little doubt it will succeed ere many years pass away. The ballot is now very generally applied in Canada to municipal elections. The system of Ontario is said to be less secret than that of the dominion, or its own municipal regulations, as there are facilities for tracing false personation. On the whole, however, the system works in all the provinces quite satisfactorily, and may be considered secret to all intents and purposes.

[2] See Bourinot, "Federal Government in Canada," pp. 73-75, 160.

great power and varied ability to which the people may refer with pride and gratulation. The reference to the courts of all cases involving points of constitutional interpretation has also worked to the advantage of the commonwealth. On the other hand, Canadians call attention to the following features of their system as demanding the serious consideration of their co-workers in the cause of good and efficient government.

An executive, working in unison with, and dependent on parliament, its members being present in both branches, ready to inform the house and country on all matters of administration, holding office by the will of the people's representatives, initiating and controlling all measures of public policy, and directing generally private legislation.

An effective and methodical system, regulating and controlling all legislation of a private or special nature, so as to protect vested rights and the public interests.

A judiciary not dependent on popular caprice, but holding office during good behaviour, and only removable by the joint action of the two houses and the executive of the federal state.

A large and efficient body of public servants whose members hold office, not on an uncertain political tenure, but as long as they are able to perform their duties satisfactorily, and who have always before them the prospect of a competency for old age at the close of a career of public usefulness.

A system of voting at elections which practically secures the secrecy and purity of the ballot, effectually guards the voter "against ticket peddlers, election workers and spies," and "takes the monopoly of nomination out of the hands of the professional politicians and removes the main pretext for assessments upon candidates which now prevent honest, poor men from running for office." [1]

The jurisdiction possessed by the courts of trying all cases of bribery and corruption at elections, and giving judgment on the facts before them, in this way relieving the legislature of a duty which could not, as experience had shown, be satisfactorily performed by a political body, influenced too often by impulses of party ambition. [2]

The placing by the constitution of the jurisdiction over divorce in the parliament of the dominion and not in the legislatures of the provinces, the upper house being now, by usage, the court for the trial of cases of this kind, except in the maritime provinces, which had courts of this character previous to the federal union. The effect of the careful regard entertained for the marriage tie may be estimated from the fact that

[1] See remarks of 'New York World,' October 17th, 1889, on "Ballot Reform."

[2] The remarks attributed to Mr. Joseph Chamberlain with respect to the purity of elections in England may be interesting to my readers. "In my opinion," he is reported to have said (see an interesting article in 'Lippincott's Magazine' for September, 1889, on the "Australian Ballot System," p. 385) "there is at the present moment exceedingly little electoral bribery and corruption in the United Kingdom. The elections are singularly pure, and are daily, if it were possible, improving in that respect. Corruption, indeed, is almost an impossibility, owing to the fact that the briber is absolutely dependent upon the bribe-taker's observance of the motto, 'honour among thieves,' for the former has no means of ascertaining how the latter votes. This is due to the secrecy in which ballots are cast; so very different from here [the United States] where the voter practically casts his vote in public." No system, we may be sure, has yet been devised even in Canada, capable of meeting successfully all the corrupt acts of the unscrupulous politician, but much has been gained within a few years, and elections are now in the majority of cases fairly pure and inexpensive. One must not be always guided by the opinions of party newspapers after an election: to charge corruption is often the easiest way of accounting for the result. The law is good and works on the whole admirably.

from 1867 to 1886 there were only 116 divorces granted in Canada against 328,613 in the various states of the union. [1]

The differences that I have shown to exist between the political systems of the two countries are of so important a character as to exercise a very decided influence on the political and social conditions of each. Allied to a great respect for law—which is also a distinguishing feature of the American people, as of all communities of the Anglo-Saxon race—they form the basis of the present happiness and prosperity of the people of the Dominion and of their future national greatness. It was to be expected that two peoples lying alongside of each other since the commencement of their history, and developing governmental institutions, drawn from the same tap-root of English law and constitutional usage, should exhibit many points of similarity in their respective systems and in their capacity for self-government. But it is noteworthy that their close neighbourhood, their means of rapid communication with one another, the constant social and commercial intercourse that has been going on for years, especially for the past fifty years, have not made a deeper impress on the political institutions and manners of the Canadian people, who being very much smaller in numbers, wealth and national importance, might be expected to gravitate in many respects towards a nation whose industrial, social and political development is one of the marvels of the age. Canada, however, has shown an independence of thought and action, in all matters affecting her public welfare, which is certainly one of the best evidences of the political steadiness of her people. At the same time she is always ready to copy, whenever necessary or practicable, such institutions of her neighbours as commend themselves to the sound judgment of her statesmen. Twenty-five years ago at Quebec they studied the features of the federal system of the United States, and in the nature of things they must continue to refer to the working of the constitution of that country for guidance and instruction.

The comparisons I have made between the two systems of government, if carefully reviewed, ought, I submit, to show that Canada has been steadily fulfilling her destiny on sound principles, and has in no wise shown an inclination to make the United States her model of imitation in any vital particular. It is quite clear that Canadians who have achieved a decided success so far, in working out their plan of federal union on well defined lines of action—in consolidating the union of the old provinces, in founding new provinces and opening up a vast territory to settlement—in covering every section of their own domain with a net work of railways—in showing their ability to put down dissension and rebellion in their midst—it is quite clear they are not ready in view of such achievement to confess failure, an absence of a spirit of self-dependence, a want of courage and national ambition, an incapacity for self-government, and to look forward to annexation to the United States as their "manifest destiny."

But whatever may be the destiny of this youthful and energetic community, it is the earnest wish of every Canadian that, while the political fortunes of Canada and the United States may never be united, yet each will endeavour to maintain that free, friendly, social and commercial intercourse which should naturally exist between peoples allied to each other by ties of a common neighbourhood and a common interest, and that the only rivalry

[1] See Gemmill on "Divorce in Canada," xxii. Also "Statistics of Marriage and Divorce," by Rev. S. W. Dike, 'Political Science Quarterly,' Dec., 1889.

between them will be that which should prevail among countries equally interested in peopling this continent from north to south, from east to west, in extending the blessings of free institutions and in securing respect for law, public morality, electoral purity, free thought, the sanctity of the home, and intellectual culture.

CHAPTER III.

CANADA AND SWITZERLAND.

It is quite possible that some of my readers may a little wonder why I should go for historical or political parallels to a country so distant from our own as the federal republic of Switzerland.[1] Many persons, doubtless, look upon that country as rather a delightful resort for summer tourists and mountain climbing, and forget that the Swiss cantons have long been the home of freedom, and in the apt words of an English writer, "a most instructive patent museum of politics."[2] Interesting experiments in political government have for centuries been attempted in that country, and from its experience not a few valuable lessons can be taught to the student of federal government. Its lofty mountains and eternal glaciers, its sequestered valleys and picturesque hamlets, have but an insignificant interest compared with the teachings which its history affords us of the strength that small communities can present when united by the powerful ties of a common interest and a common danger, and animated by a fervent desire to preserve their liberties in their ancient vigour. That old story of Tell which delighted us all in our boyhood has long since disappeared into the realms of mythical tradition where so many tales which evoked our youthful enthusiasm have been lost, and is now believed with reason to be only a legend which originated in Scandinavia and was brought into the Swiss country by one of the early migrations of the wandering tribes of that fruitful land of fables. Be that as it may, Switzerland had ever among its people many bold men ready to oppose the exactions of tyranny, and it is to their courage and love of freedom as much as to the jealousies of surrounding peoples that this "land of the mountain and the flood" owes its existence as a separate free nation among the great communities of Europe.

In the beginning of one of those interesting lectures delivered some years ago by

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[1] The little canton of Schwyz—one of the three original members of the first alliance of ancient lands—has had the honour of giving its name to the whole confederation, though,it was not accepted formally as a national title until the present century. As the Engles or Angles—one of the three bands of invaders from North Germany—have left the eternal impress of their name on the land they helped to win, so the little state of Schwyz—one of the smallest cantons in area and population—has stamped itself for all time on the union of all the commonwealths.

[2] Bryce, "American Commonwealth," ii. 4.

Professor Freeman on the "Growth of the English Constitution," he pays an eloquent tribute to the institutions of Switzerland which has been often quoted by writers referring to the history and government of that country. It is a land, he truly says, "where the oldest institutions of our race, institutions which may be traced up to the earliest times of which history or legend gives us any glimmering, still live on in their primeval freshness." It is a land, "where an immemorial freedom, a freedom only less eternal than the rocks that guard it, puts to shame the boasted antiquity of kingly dynasties, which, by its side, seem but as innovations of yesterday." In the institutions of the Swiss cantons, "which have never departed from the primeval model, we may see the institutions of our forefathers, the institutions which were once common to the whole Teutonic race, institutions whose outward form has necessarily passed away from greater states, but which contain the germs out of which every free constitution in the world has grown." [1] But in addition to these interesting and instructive features of the political system of Switzerland, there are in the nature of the federal constitution of that country and in the conditions under which it has been founded, and is now being worked out, certain suggestive facts from which conclusions may be drawn of much value to all thoughtful minds among the Canadian people who are endeavouring to establish a permanent federation by harmonizing radical differences of race and creed on the sound basis of compromise, conciliation and justice.

The federal system which now unites the Swiss cantons has many features in common with that of Canada, and especially with that of the United States, which has in fact been closely studied by them and by ourselves. The federation of the United States had been in operation for sixty years before Switzerland adopted a similar system after an experience of a loose system of alliances for a long period of time. The conditions under which the cantons combined for general and common purposes were favourable to such a union. In Switzerland, as in Canada and the United States, there were various communities possessing special interests, and having long established local institutions to which they had naturally a strong attachment. The federal idea is eminently adapted to the circumstances of communities so situated. They desire to unite for certain national objects in order to give guarantees of strength and security to the communities as a whole, and at the same time wish to preserve as far as possible in their integrity all those local privileges and rights, the continuance of which under their own immediate control is not inconsistent with the general interests of the confederation. The history of the Swiss communities as cantons goes back to immemorial times, and their respective peoples have always entertained for the divisions in which they live a feeling of affection, and even veneration, which shows itself throughout the constitutional arrangements of the confederation. It has been precisely the same in the case of the United States and of the Dominion. In the United States there have been always since the beginning of their history distinct self-governing communities, called provinces or colonies under the English regime, and subsequently, states, which agreed of their own free will to give up certain rights to a common government that they might form a united and strong nation; but at the same time they preserved all those institutions and privileges which are intimately connected with the every-day life, the property, the happiness and the security of

[1] Freeman, "Growth of the English Constitution," (4th ed.), pp. 1, 2, 8.

individuals. The national government which they established bears traces of the forms of those institutions of the states with which the framers of the constitution were naturally most familiar. In Canada we can see how history has repeated itself in this particular. The provinces, long in the possession of an admirable system of local government, naturally maintained all those features necessary to their local autonomy. The province of Lower Canada, peopled by a French race, always adhering with tenacity to the language of their fatherland, possessing institutions which they valued highly, would have consented to no scheme that did not give every possible guarantee for the conservation of what they considered their most valuable heritage. A judicious English publicist has said with much force that a federal state "is a political contrivance intended to reconcile national unity and power with the maintenance of 'state rights.'" And again, the sentiment "which creates a federal state is the prevalence throughout the citizens of more or less allied countries of two feelings which are to a certain extent inconsistent—the desire for national unity and the determination to maintain the independence of each man's separate state.[1]" Before I close this paper I shall attempt to show that while these two apparently inconsistent feelings must naturally exist in a federation, there are always powerful reasons why the national sentiment will prevail in the end in times of national crises over purely sectional considerations. At present, however, we are only dealing with the general principles which form the basis of a federation, and with the sentiment or motive power which makes such a form of government possible and practicable. If we study the constitutions of the United States, of Canada and of Switzerland, we see in them all emphatically laid down the principles which actuated the people in giving their consent to their respective confederations.

The articles of "confederation and perpetual union" that were passed by congress in 1778 asserted that the states "severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them or any of them, on account of religion, sovereignty, trade, or any other pretence whatever." The principle of state sovereignty is emphatically affirmed in the second article—"each state retains its sovereignty, jurisdiction and right, which is not by this confederation expressly delegated to the United States in congress assembled." This confederation failed because it had inadequate national authority, and the states were forced at last by instincts of national preservation to give greater strength and power to the general government by the adoption of the constitution of 1787, which declares in the preamble that the people of the United States "ordain" this instrument in order "to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty." But, not satisfied with the terms of the original constitution as it passed the convention of 1787, the advocates of state rights subsequently passed an amendment embodying a declaration of the confederation that "powers not delegated to the United States, nor prohibited by it to the states, are reserved to the states respectively or to the people." The amendments, of which this formed one, have been called the "American Bill of Rights," on account of the fundamental idea from which they sprang—that as little

[1] Dicey, "Law of the Constitution" (3rd ed.), p. 133.

as possible should be left in the constitution to supposition or implication, but that every means should be taken to prevent controversy or doubt in the future.[1]

The British North America Act of 1867, which is the "fundamental law" of the dominion of Canada, simply sets forth in the preamble that "the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united," but in the resolutions which were adopted at the Quebec conference of 1864, we find clearly defined the principles on which the union is based.[2] The system of government best adapted under existing circumstances to protect the diversified interests of the several provinces and secure harmony and permanency in the working of the union is declared to be "a general government charged with matters of common interest to the whole country, and local governments for each of the Canadas, and for the provinces of Nova Scotia, New Brunswick and Prince Edward Island [which was then expected to come in] charged with the control of local matters in their respective sections." In the constitution itself the respective powers of the dominion and provincial governments are enumerated with as much definiteness as was possible under the circumstances, but the powers that are not within the defined jurisdiction of the provincial governments are reserved in general terms to the central authority, the very reverse of the principle followed in the United States constitution. We shall see that in the endeavour to enumerate definitely the separate powers of the central and local organizations the Swiss constitution resembles the Canadian rather then the United States instrument, but with a jealous regard to state rights the powers not expressly delegated to the general government rest in the cantons and not in the central authority.

In the closing years of the thirteenth century, the historic lands of Schwyz, Uri, and Unterwalden, near the lake of Lucerne, having broken loose from the trammels of the feudal system, joined in a perpetual union, and adopted articles of confederation in which lay the germs of the present federal republic.[3] Since those years the three cantons have increased to twenty-two, or, more strictly speaking, to twenty-five in number, by alliances, conquest or annexation, but until 1848, they were bound together only by a mere federal league, except for a few years after the French revolution, when they were formed into a Helvetic republic, imposed upon the cantons by French influence and antagonistic to their spirit of local self-government, since it abolished the cantons to all intents and purposes as governing divisions, and established prefectures or administrative districts in conformity with the system prevalent in France.[4] The Emperor Napoleon in 1803 yielded in a measure to the strong sentiment that prevailed in Switzerland against this interference with ancient and valued rights, and established a new constitution, called the

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[1] Von Holst, "Constitutional Law of the United States" (Mason's translation), pp. 29, 30.

[2] Bourinot, "Federal Government in Canada," p. 32.

[3] Bluntschli "Geschichte des Schweizerischen Bundesrechtes," i. 59, 60; ii. i.

[4] The names of the original cantons and the years of alliance are as follows: Uri, Schwyz, Unterwalden, (1291), Luzern (1332), Zürich (1351), Glarus and Zug (1352), Bern (1353), Freiburg and Solothurn (1481), Basel and Schaffhausen (1501); Appenzell (1513); St, Gallen, Aargau, Graubünden, Thurgau, Ticino, Vaud (1803); Valais, Geneva Neufchâtel (1814). Subsequently Unterwalden was divided into half-cantons, Obwalden and Nidwalden; Basel into Baselstadt and Baselland; Appenzell into Appenzell-Exterior and Appenzell-Interior. The allied cantons had previous to 1848 a Diet, established by the thirteen original cantons enumerated as above; not acting strictly as a representative body, but rather as delegates under instructions from their districts, and having the functions of ambassadors. See Moses, "Federal Government in Switzerland," chap. ii.

Act of Mediation,—confessedly a wise act of statesmanship—on account of its being a compromise between the centralizers and the federalists or the supporters of the old condition of things. This constitution restored the local institutions of the cantons, and formed a confederation with a diet or general representative assembly, but at the same time it made the country practically a mere dependency of France, and "by thus outraging national dignity paved the way for the restoration by the allied Powers" of reactionary and oligarchical governments.[1] After the fall of Napoleon there was practically a return to the condition of things that existed previous to the French revolution, and the cantons received back a large portion of their sovereignty while a loose federal pact still bound them all together. In 1848, after years of agitation and a war of secession known as the war of the Sonderbund[2]—a league of Roman Catholic states which wished to withdraw from the confederation—there was a revision of this federal pact, and a constitution was formed with the object of meeting the aspirations of the advocates of a strong central authority, and giving due heed to the strength of local autonomy in the country. As must be always the case where there are conflicting elements at work, just as it happened at Quebec in 1864, and at Philadelphia in 1787—this instrument showed throughout a spirit of compromise. The cantons had to concede rights in order to give that strength and efficiency to the national government which is absolutely necessary to the permanency and stability of the whole confederation, but at the same time they retained under their immediate control all indispensable powers of local self-government. Even this constitution proved defective in many respects on account of the large measure of power still retained in the cantons, and the numerous checks and guards imposed on the efficient operation of the central authorities. The advocates of centralization pressed for another revision, which was finally made in 1874, and while this revised constitution relieves the federal state of some difficulties which impeded its efficient working, yet it maintains to an important degree the principle of local sovereignty—the main spring of the political action of the cantons since the commencement of their history.

The peoples of the twenty-five cantons, which now form in their entirety the Swiss confederation, have united "to maintain and promote the unity, strength and honour of the Swiss nation." Its purpose is declared emphatically to be "to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the confederates, and to foster their common welfare." The cantons are "sovereign, so far as their sovereignty is not limited by the federal constitution; and as such they exercise all the rights which are not delegated to the federal

[1] See an instructive article on "Democracy in Switzerland" in the 'Edinburgh Review' for January, 1890.

[2] The Sonderbund was a religious war, which had its origin in the efforts of the radical protestant party to abolish the monasteries in the Roman Catholic cantons, whose rights and privileges had been guaranteed in the convention or pact of 1815, which settled the basis of union into which Geneva, Valais, Neufchâtel, and the territories previously held as dependencies, entered with all the privileges of confederate cantons. The diet in 1843, as a sort of compromise, agreed to abolish half of the monasteries in the canton of Aargau, and the result was the establishment of a league or Sonderbund of the Roman Catholic cantons, Schwyz, Uri, Unterwalden (the three original members of the first federal alliance in 1309) Lucerne, Freiburg, Valais and Zug. Four years later, a conflict of arms was precipitated, and, as in the American republic, the cause of union triumphed. The result of the war was the written constitution of 1848, establishing a federal union. "The year 1848," says the writer in the 'Edinburgh Review,' already cited, "which exiled Louis Philippe, and gave France a transitory republic, founded in Switzerland, a national government, as stable as any in Europe; the Swiss constitution is the one fabric which does honour to the constitution-makers of the year of revolutions."

government." Here we see reproduced essential features of the constitution of the United States.

I have in the second paper of this series given a brief summary of the respective powers of the governments of the United States and of Canada, and it will now be useful for the reader, as he proceeds, to refer back and make comparisons with the following short statement of the division of powers under the Swiss federal system.

Authorities of the Swiss Confederation:[1]—A federal council, or executive, known as the Bundesrath or Conseil Fédéral, with a president at its head known as Bundespräsident, performing both administrative and judicial functions.

A federal assembly (Bundesversammlung or Assemblée Fédérale), consisting of two houses—a national council or popular assembly (Nationalrath or Conseil National) and a council of states or senate (Ständerath or Conseil des Etats), having large legislative powers, but subject to the referendum or popular acceptance or rejection of legislative acts.

A federal or supreme court, (Bundesgericht or Tribunal Fédéral), with a president or chief justice, and a vice-president to take his place when necessary, having jurisdiction in civil and criminal cases, and in cases of public law.

Cantonal governments, varied in their character, but having generally an executive or administrative council, and a legislative body subject to the popular acceptance or rejection of its legislative acts.

Cantonal courts, organized as each canton prescribes, and only subject to the federal supreme court in cases provided by law.

From the foregoing summary it will be seen that the government of the Swiss federal republic is divided into executive, legislative, and judicial authorities, although there is by no means that clear separation between them that exists in the United States.

The supreme authority virtually rests in the federal assembly.

The national council and the council of states sit apart from each other except for the election of the federal council, and other electoral and judicial purposes defined by the constitution, when they constitute one assembly in the constitutional sense.

The national council consists of 145 representatives chosen by ballot in forty-nine electoral districts in the proportion of one representative for every 20,000 persons, by all citizens who have completed 20 years of age and have a right to vote within their respective cantons at elections or in the case of the referendum or popular vote, to which I shall refer later on. Every layman who has a right to vote can be a member. The council elects at each session a president and vice-president, who cannot be re-elected in the same capacity at the ensuing session. Members receive out of the federal chest a regular indemnity at the rate of about four dollars a day, when present, as well as a travelling allowance of about five cents a mile, and are elected for three years.

The council of states, like the United States senate, represents the states or cantons, each of which has two members, making 44 members in all—each half canton having one member. The election and voting are entirely in the control of the cantons. In some cantons the members are, like senators, elected by the representative bodies; in others, where the referendum exists, they are elected by popular vote. Members are paid by

[1] I have used whenever necessary the excellent translation of the Swiss constitution by Professor James of the University of Pennsylvania.

the cantons themselves, and their term of service varies from one year to three years. The council chooses, from its own body, for each session, a president, and vice-president, who cannot be taken from the deputies of the same canton that furnished the same officers of the preceding ordinary session.

The federal council is composed of seven members chosen every three years by the assembly in joint session from among all Swiss citizens eligible to the national council, with the limitation that no more than one member of the federal council shall be chosen from the same canton. This council holds office only during the existence of the federal assembly, and during that time it cannot be dissolved by any adverse vote of the federal assembly. The president and vice-president are named for one year by the federal assembly from among the members of the council, and all these officials receive an annual salary from the federal chest—the president's being $2,700, and that of the other members of the council, $2,400 a year.

The federal council is divided into the following departments of administration:

1. Foreign affairs,
2. Interior,
3. Justice and police,
4. Military,
5. Finance and customs,
6. Agriculture and industry,
7. Posts and railways,

which in many ways recall the division of authority in the government of Canada,—foreign affairs of course excepted. [1]

The federal court is composed of nine judges, and as many substitutes, elected for six years by the federal assembly out of persons eligible for the national council, and care is taken that the three nationalities are represented in the tribunal. The assembly also appoints a president or chief justice from among the members of the court for two years. The judges are eligible to be re-elected on the expiration of their term of service. They may give their judgments in German, French or Italian, according to their respective nationalities, just as the French and English judges of the supreme court of Canada may render their decisions in their own languages. The president receives $2,200, the other judges $2000 a year.

Before I go on to refer to the various powers and duties entrusted to the federal authorities, thus briefly enumerated, I may first appropriately mention a few features of the

Cantonal Governments.—Each canton is a state within itself and has complete and plenary jurisdiction over all matters not expressly or impliedly ceded to the federal authorities. The constitutions of the cantons vary in character. In some of the smaller cantons there still exist in their ancient forms those free popular assemblies, known as Landsgemeinden, where the local authorities are chosen, local questions taken up and disposed of, and laws and constitutions submitted to the people's voice, in a manner I shall describe later. In the majority of cantons, there are legislative, executive and judi-

[1] The departments of the Canadian government comprise, justice, militia, public works, railways and canals, finance, customs, interior, agriculture, marine and fisheries. There is also the department of Secretary of State, who has charge of public printing and other public functions. The president of the council has no departmental duties in the ordinary sense. Unlike the Swiss council, the Canadian council is not limited to numbers, but may be increased or diminished at the pleasure of the Crown, on the advice of the ministry of the day. See Bourinot, "Manual of Constitutional History of Canada," pp. 70-74.

cial authorities as in the federal state. In the majority there are grand councils or representative bodies of short duration and subject to the popular veto. The executive power is exercised by bodies known in some states as the "Landamman and Council," in others as the "Estates Commission" or "Standeskommission," or the "Smaller Council," but in the majority of cases as the "Administrative Council" or "Regierungsrath." Their term of office varies from one to six years in the several cantons, and the members are elected directly by the people or by the legislative bodies. The legislature of the cantons consists of one house, called the Greater Council or Grosser Rath in the majority of the cantons, in others the Cantonal Council or Kantonsrath, or the Landrath. The representatives are elected by popular vote for terms varying from one to six years. The codes of law vary according to nationality. The French cantons, like the province of Quebec, follow the French civil law, based on the Code Napoleon. The courts are generally composed of judges elected by the people or the popular councils for a term of years, not exceeding four. The most interesting feature of the cantonal system of local government is the existence of local divisions in certain cantons known as communes, or gemeinde, which were known even in feudal times, and are associated with the dearest rights and privileges of the people. The commune has been well stated to be the school in which the Swiss learned lessons of local freedom—the home of the liberties which they have cherished for centuries. Its history goes back to the old times of our Teutonic and English ancestors, who brought their local institutions from northern Germany. It is practically the local division of early English times, known as the township, which was gradually merged in the familiar modern parish, in which the vestry has so long played an important part. It regulates all its own concerns by municipal councils elected in accordance with long established usage, and is in fact the canton in a diminutive form. In addition to these self-governing local divisions there are areas established for purposes of state administration known as districts, over which presides an officer known as Bezirksammann or Regierungs-Statthalter, elected by the people or by the legislative and administrative councils.

I come now to enumerate the powers and duties of the respective authorities of the confederation so far as is necessary to give the reader a general idea of the nature of its constitution, and enable him to make comparisons with our own federal system. Like the British North America Act, the Swiss constitution attempts to enumerate as far as practicable the attributions and jurisdictions of the respective authorities, and consequently is in this respect a more elaborate instrument than the United States constitution.

While the latter with all its amendments made since 1787 contains only 42 sections, divided into 15 articles, the Swiss instrument comprises some 126 articles or sections, strictly speaking, in which the chief object is obviously to guard the sovereign powers of the cantons, and prevent a conflict as far as possible with the general or central authorities.

In its many details, and in its declaration of fundamental rights and principles, it resembles in not a few respects the constitutions of the American States, which make assertions of the rights and immunities of the individual citizen generally unnecessary under the existing condition of things, and deal with a variety of topics which can be well left to the ordinary action of the legislature or of the administrative authorities, and pursues those topics into a minute detail hardly to be looked for in a constitutional law.

Some of the principles enunciated—those that prohibit the establishment of gaming houses for instance—have no connection with constitutional law.

In the Swiss constitution, however, we can see that its framers found it necessary to guard against the conflicting interests of different national and religious elements.

Referring now to the general provisions of the constitution we find that

The Powers of the Confederation—may be enumerated as follows :—

The sole right of declaring war, making peace, and concluding treaties with foreign powers, especially with respect to commerce and customs.

Military legislation, arming of troops, and military instruction, control over the army and material of war provided by law, and over all military resources of the cantons in case of danger.

The construction of public works at its own expense or by subsidies.

The general supervision of water and forest police, and the regulation of the right of fishing and hunting, especially for the preservation of game and useful birds.

Legislation for the construction and operation of railroads.

The establishment, besides the existing polytechnic school at Zürich, of a federal university and other institutions of higher instruction, or the subsidizing of such institutions.

The customs, and the levying of export and import duties—taxes on exports, necessaries, and raw materials being made as low as possible, those on luxuries as high as may be found necessary, and the products of Swiss industry taxed at a lower rate than those of foreign origin.

The regulation of the manufacture and sale of alcohol.[1]

Uniform legislation with respect to the employment of children in factories, and the protection of workmen generally.

The control of the post and telegraphs, the revenue of which goes into the treasury.

General supervision over certain important roads and bridges in whose maintenance the union has an interest.

The regulation of weights and measures.

The manufacture and sale of gunpowder.

The protection of the rights of marriage.

The right to coin money, to issue bank notes, and to determine the monetary system.

The power to make laws respecting civil capacity, commercial obligations, literary and artistic copyright, the collection of debts, and bankruptcy—the administration of the laws remaining in the control of the cantons, except when specially assigned to the federal supreme court.

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[1] The public revenue of the confederation is derived chiefly from customs. A considerable income is also derived from the postal system, and from the telegraph establishment conducted by the federal government on the principle of uniformity rates. The sums raised under these heads are not left entirely for government expenditure, but a great part of the postal revenue, as well as a portion of the customs dues, have to be paid over to the cantonal administrations, in compensation for the loss of such sources of former income. In extraordinary cases, the federal government is empowered to levy a rate upon the various cantons after a scale settled for twenty years. A branch of revenue proportionately important is derived from the profits of the various federal manufactories, and from the military school and laboratory at Thun, near Bern. The total revenue is about $12,000,000, which generally covers the expenditure, and, the public debt amounts to over $5,000,000, against which there is the "federal fortune" or states property, valued at nearly $12,000,000. See "Statesman's Year Book" for 1890, p. 984.

The right to establish the limits within which a citizen may be deprived of his political rights.

Extradition.

Measures of sanitary police against dangerous epidemic and veterinary diseases.

The power to expel foreigners who endanger the internal or external safety of the federation.

Powers of the Cantons.—The foregoing is a general statement of the principal powers of the general government. But there are limitations expressly placed by the constitution on the powers of the confederation in the interest of the cantons. While, as previously stated, the cantons exercise all the rights not expressly given to the federal government, the constitution "guarantees to the cantons their territory, their sovereignty, their constitutions, the liberty and rights of the people, the constitutional rights of citizens, and the rights and privileges which the people may have conferred on those in authority." The cantons have the right to make agreements or conventions between themselves upon legislative, administrative or judicial subjects, and to impose certain import duties, but their execution is prevented should they contain anything contrary to the rights of the confederation or of other cantons. Subject to similar limitations they may also deal directly and conclude treaties with the subordinate authorities of foreign powers with respect to matters affecting the administration of public property, and border or police intercourse. Such provisions are quite intelligible when we reflect that Switzerland is a country surrounded by other states, and having a number of relations of neighbourhood, which do not touch general interests, and in such cases agreements can be concluded between cantons and frontier states, the confederation only reserving the right of supervision. [1] Even in the case of public defence, and the maintenance of the militia, the cantons have rights which control more or less the powers of the confederation. The federal government has no power to keep up a standing army, nor can any canton or half canton, without the permission of the former maintain a permanent force of more than 300 men, excluding the mounted police or gens d'armes necessary for police purposes. The cantons have authority over the military forces of their territory, so far as this right is not limited by the federal constitution or laws. The enforcement of military law in the cantons is entrusted to the cantonal officials, within limits fixed by federal legislation, and under federal supervision. In case of internal disputes, the cantons are not allowed to enforce their own rights, but must refer the difficulty to the federal authorities. In case of danger from foreign aggression the threatened canton may call upon other cantons for aid, and notify the federal government at the same time, in order that it may take such measures as are necessary; and all expenses thus incurred may be borne by the federal treasury.

The cantons provide for primary compulsory instruction, which must be free and sufficient, and placed exclusively under the direction of the secular authority. The public schools, which are among the best in the world, are frequented by the adherents of all religious sects, without any offence to their freedom of conscience or belief. In some cantons no religious instruction is given; in others an hour is devoted to elementary religious teaching, but no one is obliged to attend. Mixed schools exist in some cantons

[1] Adams' "Swiss Confederation," p. 30.

and are worked on purely non-sectarian principles. In case the cantons do not fulfil their duties in these particulars, the federal government has a right to provide remedial legislation. Religion is a matter within the jurisdiction of the cantons, and a state church may be established and supported, but freedom of conscience cannot be interfered with.[1]

The various cantons have their own local administrations and budgets of revenue and expenditure. Most of them have also their public debts, which are not of large amount and are well secured. [2]

Having cited the general powers of the federal and cantonal authorities, I may now enumerate briefly the

Powers of the Federal Assembly.—The national council and the council of states exercise co-ordinate powers on all subjects placed within the federal jurisdiction by the fundamental law and not assigned to other authorities, especially on the following subjects :—

Laws relating to the organization and election of the federal authorities.

Compensation of members of the federal government and other bodies ; the creation and salaries of permanent federal officers.

Election of the federal council, of the federal court, of the chancellor or secretary of the national council, and of the commander-in-chief of the federal army.

Such other powers of election or of confirmation as may be legally authorized by the confederation.

Alliances and treaties with foreign powers ; also the approval under certain circumstances of treaties made by cantons with other cantons and with foreign countries.

Measures necessary for the external safety and the maintenance of the independence and neutrality of Switzerland ; the declaration of war, and the conclusion of peace.

The guarantee of the constitutions and of the territory of the cantons, intervention in consequence of such guarantee ; measures for the internal security of Switzerland ; for the maintenance of peace and order, amnesty and pardon.

Measures for the preservation of the federal constitution, for carrying out the guarantee of the cantonal constitutions, and for the fulfilment of federal obligations.

The control of the federal army.

The annual budget, audit of public accounts, and loans.

Supervision of federal administration, and federal courts.

Appeals in case of administrative conflicts.

Conflicts of authority between federal authorities.

Amendment of the federal constitution.

Continuing this enumeration of the powers of the federal authorities, we come now to

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[1] See Adams, p. 183 et seq.

[2] The income of the cantonal administrations is derived partly from direct taxes on income and property (on varying scales, and often with progressive rates for the different classes) and partly from indirect duties, as excise, stamps, etc. Several cantons have only indirect taxation, and over the whole about 58 per cent. of the revenue is raised in this form. In most of the towns and parishes heavy municipal debts exist. See "Statesman's Year-Book" for 1890, pp. 984-986. By art. 31 of the federal constitution, the freedom of trade and industry throughout the confederation is guaranteed, and by other articles the cantons are allowed to collect import duties on wine and other spirituous liquors under certain conditions, among which is that in the collection of duties the free transit of goods shall not be interfered with. The same article also provides that the federal government must approve of the laws and ordinances of the cantons.

The Federal Council—which exercises the following powers and duties within the limits of the constitution :—

The conduct of federal affairs, according to the laws and resolutions of the confederation.

The due observance and execution of the federal constitution, laws and other instruments of the union, of the guarantees of the cantonal constitutions, and of the judgments of the federal court.

The proposal of bills or ordinances to the federal assembly, and reports on propositions submitted to it by the federal councils, or by the cantons.

Appointments not assigned to the federal assembly, federal court, or other duly authorized body.

Examination of treaties made by cantons.

The protection of the internal and external safety of the confederation and the maintenance of independence, neutrality, peace and order.

The power to raise and employ troops in cases of urgency, and whenever the federal assembly is not in session, but the councils must be immediately summoned, and the number of troops so summoned shall not exceed two thousand men nor remain in arms more than three weeks.

The supervision of the military establishment and other branches of the administration of the union.

The examination of all laws and ordinances of the cantons that should be submitted for their approval.

The management of the finances of the confederation.

The supervision of the business of all federal officials. Reports upon the conduct of business at each session of the federal assembly and upon the internal condition and foreign relations of the union.

The Federal Court—has jurisdiction in the following cases :—

In civil suits between the confederation and the cantons ; between the confederation and corporations or private persons when the amount involved is of sufficient importance ; between cantons ; between cantons and corporations or individuals within certain limitations fixed by federal authority ; between communes of different cantons ; and also in cases where both parties to the suit agree to the reference, and the litigation exceeds a certain value fixed by the federal assembly.

In criminal cases, when the court is assisted by a jury, viz. : High treason, rebellion or violence against the federal authorities ; crimes and misdemeanors against the law of nations ; political crimes and misdemeanors which are the cause or the result of disturbances that demand armed federal intervention. Cases against officials appointed by a federal authority.

In cases of conflict of authority between the federal and cantonal authorities ; disputes between cantons on questions of public law ; complaints of the violation of the constitutional rights of citizens ; and complaints of individuals for the violation of concordats between cantons or of international treaties.

And in all the cases just mentioned, the federal court shall apply the laws and

general decrees of the federal assembly, and shall in like manner observe all treaties which shall have been ratified by the same body.

The general reader may find these details a little wearisome, but the political student will at once see they are necessary to give a fairly correct idea of the important features of a federal system which bears a resemblance to that of Canada. In comparison with our federal system, however, the central authority of Switzerland is weak in some respects, and more power is left in the cantonal, or, as we would call them, the provincial organizations. The president of the federal council has none of the powers of the president of the United States, or of the premiers of Canada or England.[1] He is only chairman of the council, elected for one year, and not eligible for re-election for the following year; but the same principle of disability does not apply to the other members of the executive, who hold their offices for three years and may then be re-elected by the federal assembly. It is interesting to note that the re-election of competent men who have gained valuable experience in their respective departments, and have proved their usefulness, is the rule and not the exception in this country of purely democratic institutions. When they have once proved their ability in the work of administration the people are only too anxious to retain their services. The cabinet is not a political body in a party sense, but may contain men of different opinions; they are not members of the federal assembly, and, once elected by that body, do not depend on the support of the majority in the national council or popular house. They cannot vote, but they sit whenever necessary in either chamber, propose and draft legislation, explain acts of administration, take part in the debates, make motions on matters under consideration, and practically perform many of the important duties that a cabinet minister performs in the English or Canadian Commons. In this respect the Swiss council is able to exercise greater influence than the so-called cabinet at Washington, whose members cannot sit in either house of congress, and have no immediate legislative responsibilities; and it has been mooted of late whether it would not be wise to make a change in this direction, and introduce the Swiss practice into the senate and house of representatives.[2]

[1] "In the hands, however, of a man of great ability the position assumes far more importance than would appear likely from an analysis of the functions which the constitution calls upon him to perform; for it must be borne in mind that not only is he entrusted with a certain control over the various departments of the executive, and not only does he represent Switzerland in the eyes of foreign nations, and has frequently in that capacity to take the initiative in matters of general policy, but his personal influence is felt within the federal assembly itself." 'Westminster Review,' Feb., 1888, p. 208.

[2] Mr. Hannis Taylor in the 'Atlantic Monthly,' June, 1890, would confer upon the cabinet of the United States the right to a place and voice in each branch of congress and to initiate legislation. He sees, however, that their influence would be very small unless they could be clothed with all the authority of official representatives of the party, of which the president is head. He suggests that each of the great parties, by a resolution of its national convention, should vest in its presidential candidate and his cabinet, in the event of success, the official leadership according, to English practice. He is vague, but I judge that he means that the president should, when elected, choose his cabinet as far as possible from men in congress, since he dwells on the necessity for a selection "of real party leaders as cabinet ministers." The essence of the success of the system, as it exists in England and in Canada, and even in Switzerland, lies in the fact that the cabinet is a committee of the parliament. Would congress then accept a cabinet that would be simply of the president's selection, to sit, debate and perform the functions of leaders? The experience of the countries just named show conclusively that congress must have the choice. At all events, the presence of ministers to assist legislation and explain matters of administrative action would be an improvement on the existing condition of things. The discussion that has now commenced on the question will probably help to bring about a solution of a difficult problem.

Such a change would not be so radical as the adoption of the English or Canadian system of parliamentary government, and would certainly give greater efficiency and unity to legislation in congress.

Although the cabinet of Switzerland is not appointed from and dependent on a particular party, it exercises large responsibilities, and is the executive authority through which the federal assembly acts, and the guardian of the interests of the whole confederation. Like our own ministry or government it has the right to examine the cantonal laws and declare them unconstitutional or in conflict with the federal laws, although, strange to say, it does not appear to have any legal methods of enforcing its conclusions in such matters. The practice is to send a federal agent or commissioner to the canton to arrange the difficulty, if possible, on amicable terms, but should he not succeed in doing so then the federal government has no legal resource left it but generally takes the very summary step of quartering troops from another canton in the recalcitrant division, and making it bear all the expenses until the trouble is arranged—as a rule a successful measure since the cantons have very economic tendencies. Or sometimes the government will refuse to pay subsidies until the objecting canton has come to its senses.[1] As a fact, however, the executive has rarely a difficulty in executing its constitutional functions or in carrying out the decisions of the federal tribunal through the cantonal authorities through whom it can alone act. Of course, it is not necessary to say here that the Canadian constitution provides that no provincial statute can become law until it is formally passed upon by the governor-general in council. The absence of a similar provision in the Swiss constitution is another instance of the influence of the cantons in the framing of the constitution, and of their unwillingness to entrust too strong a power to the central government. The federal assembly, however, has the right to pass measures for securing the observance of the constitution, and can no doubt clothe the council with all necessary authority at critical times, and also prevent the cantons exercising unconstitutional powers. In another respect the constitution is weaker than our own, since it limits the jurisdiction of the federal court in certain essential respects. The summary I have already given of its powers show that it has certainly an important jurisdiction within a wide range; it can decide on suits of law or conflicts of authority between the confederation and the cantons, or between the cantons themselves. A somewhat similar provision is made in our supreme court act for matters of controversy between the Dominion and the provinces, and between the provinces themselves. The Canadian court, however, has no such jurisdiction as the Swiss tribunal over criminal matters of a political nature. The supreme court of Canada and of the United States can, however, in the course of cases coming before them in due process of law, declare any statute whatever of the provinces or of the Dominion itself *ultra vires*, and the moment it so declares that statute is a dead letter, unless indeed, as may happen in Canada, the judgment is reversed on appeal to the judicial committee of the privy council in England. In Switzerland the federal court must enforce every law passed by the federal legislature, even if it is a violation of the constitution. In some cases recourse must be had not to the federal tribunal, but to the federal council. In other words the Swiss constitution "has reserved some points of cantonal law for an authority not judicial but political,

[1] Adams, pp. 61, 62,

and has made the federal legislature the sole judge of its own powers, the authorized interpreter of the constitution, and an interpreter not likely to proceed on purely legal grounds."[1] The fourth sub-section of the 113th article of the Swiss constitution expressly provides that conflicts of administrative jurisdiction are reserved and are to be settled in a manner provided by federal legislation. The laws of the confederation give the jurisdiction to the political authorities over disputes respecting primary schools, liberty of commerce and trade, freedom of belief and worship, and the interdiction upon Swiss soil of the Jesuits and other societies affiliated with their order. The ablest Swiss publicists are not favourable to this division of authority, but express the opinion that it would have been far better "to have given the federal judiciary cognizance of all religious disputes, whether in the domain of public or private law, than (as sometimes happens) that the federal assembly, which is a legislative body, should be transformed for the time into a sort of a religious tribunal where such matters are apt to arouse political passions and to be decided by a majority upon party lines rather than upon legal principles."[2] Of course we see at once that here a comparison can be made between the the Swiss and Canadian constitutions. The political executive of the Dominion is given a veto over the acts of the provincial organizations, and can exercise it either on purely legal grounds or for reasons of public policy. Cases are constantly arising in our history to show the danger inherent in the exercise of this political power. When the government has given a decision on a question the dispute can be transferred to the floor of parliament, and all the bitterness inevitable in cases of religious or political controversy may be evoked.[3] Though the principle has at length been generally laid down by the two great parties of the Dominion that the veto should not be exercised in the case of acts clearly and unequivocally within the legal and constitutional powers of a province, yet it is obvious, as I have shown in a previous paper,[4] that there is a latent peril in the existence of a power which may be rashly used in times of violent excitement, and the conclusion is unavoidable that the safe and harmonious operation of any federal system lies in making the courts the guardian of the constitution in all matters involving legal and constitutional issues.

Mr. Dicey, commenting on those features of the Swiss constitution which make the federal assembly the final arbiter on all questions as to the respective jurisdictions of the executive and the federal court, goes on to give a correct explanation of the reasons why all acts of the federal parliament are treated as constitutional by the federal tribunal:— "The constitution itself almost precludes the possibility of encroachment upon its articles by the federal legislative body. No legal revision can take place without the assent both of a majority of the cantons, and an ordinary law duly passed by the federal assembly may be legally annulled by a popular veto. The authority of the Swiss assembly nominally exceeds the authority of congress (and obviously of the Canadian parliament) because in reality the Swiss legislative body is weaker than congress (or parliament.) For in each case there lies in the background a legislative sovereign capable of controlling the action of the ordinary legislature, and the sovereign power is far more easily brought into

[1] Bryce, "American Commonwealth," i. 347.

[2] Adams, "Swiss Constitution," p. 74, where Dr Dubs, an eminent Swiss authority, is quoted.

[3] See Bourinot, "Federal Government in Canada," pp. 58-62.

[4] See *supra*, pp. 50-52.

play in Switzerland than in America. When the sovereign power can easily enforce its will, it may trust to its own action for maintaining its rights; when, as in America, the same power acts but rarely and with difficulty, the courts naturally become the guardians of the sovereign's will expressed in the articles of the constitution." [1]

This citation naturally brings me to consider the most interesting and notable feature of the political system not only of the federal state, but of the cantons themselves; and that is the direct control exercised by the citizens of the confederation over the acts of the different authorities to whom they have entrusted legislative and executive powers. The principle of the referendum, or reference of legislative acts to the popular vote, is in thorough harmony with the principle of popular control that has for centuries been exhibited in the Landsgemeinden, or democratic assemblies, which have long been a striking characteristic of local self-government in Switzerland. [2] The methods in which the people assert their rights as free citizens of a pure democracy are the same that they have been from times immemorial, and have originated from the customs of the Teutonic tribes, as described in the "Germania" of Tacitus. As I have already observed, we can see a close analogy between the Teutonic and Swiss assemblies and the town meetings of New England, in which select men were elected and other public business transacted by all the citizens of the district. We can see the same forms continued in the mir or village community of Russia. These democratic assemblies are, in fact, a heritage of all those peoples who owe their origin to the Aryan family. I shall not attempt myself to describe the proceedings of these meetings, but shall refer you to a graphic description, which is given by Professor Freeman in the work from which I quoted in the commencement of this paper. Having briefly referred to the assembling of the men of Uri, and to their observance of their religious duties, he proceeds to show how they perform the functions which have devolved upon them from the most distant times as citizens of the commonwealth. "From the market place of Altdorf, the little capital of the canton," continues the learned historian, "the procession makes its way to the place of meeting at Bözlingen. First marches the little army of the canton, an army whose weapons can never be used save to drive back an invader from their land. Over their heads floats the banner, the bull's head of Uri, the ensign which led men to victory on the fields of Sempach and Morgarten. And before them all, on

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[1] Dicey, "Law of the Constitution" (3rd ed.), pp. 159, 160.

[2] Though the principle of the referendum can be seen in the action of the Landsgemeinden, the origin of the term appears to go as far back as the sixteenth century. Professor Woodrow Wilson (in "The State," sec. 522, p. 312), has good authority for saying that the term contains a reminiscence of the strictly federal beginnings of government in two of the present cantons of the confederation, Graubünden, namely, and Valais. "These cantons," continues this clear writer, "were not at that time members of the confederation, but merely districts allied with it (Zugewandte Orte). Within themselves they constituted very loose confederacies of communes (in Graubünden three, in Valais twelve). The delegates whom the communes sent to the federal assembly of the district had to report every question of importance to their constituents and crave instruction as to how they should vote upon it. This was the original referendum. It had a partial counterpart in the constitution of the confederation down to the formation of the present form of government in 1848. Before that date the members of the central council of the confederation acted always under instructions from their respective cantons, and upon questions not covered by their instructions it was their duty to seek special direction from their home governments. The referendum, as now adopted by almost all the cantons, bears the radically changed character of legislation by the people; only its name now gives testimony to its origin." See Orelli, "Das Staatsrecht der schweizerischen Eidgenossenschaft." Also Freeman in the 'Universal Review,' July 1890.

the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days, the very horns whose blast struck such dread into the fearless heart of Charles of Burgundy. Then, with their lictors before them, come the magistrates of the commonwealth on horseback, the chief magistrate, the landammann, with his sword by his side. The people follow the chiefs whom they have chosen to the place of meeting, a circle in a green meadow, with a pine forest rising above their heads and a mighty spur of the mountain range facing them on the other side of the valley. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The assembly opens; a short space is first given to prayer—silent prayer offered up by each man in the temple of God's own rearing. Then comes the business of the day. If changes in the law are demanded they are then laid before the vote of the assembly, in which each citizen of full age has an equal vote and an equal right of speech. The yearly magistrates have now discharged all their duties; their term of office is at an end; the trust which has been placed in their hands falls back into the hands of those by whom it was given, into the hands of the sovereign people. The chief of the commonwealth, now such no longer, leaves his seat of office and takes his place as a simple citizen in the ranks of his fellows. It rests with the free-will of the assembly to call him back to his place, or set another there in his stead." And Professor Freeman then refers to another feature which shows that the people of Switzerland respect ability and fidelity in their public men, and that ingratitude, which is often said to be a defect of democracy, cannot at least be charged on them. "Alike," he says, "in the whole confederation and in the single canton re-election is the rule; the rejection of the out-going magistrate is the rare exception. The landammann of Uri, whom his countrymen have raised to the seat of honour, and who has done nothing to lose their confidence, need not fear that, when he has gone to the place of meeting in the pomp of office, his place in the march homeward will be transferred to another against his will."[1]

The Landsgemeinden are now only to be found in the cantons with a small population, where it is still practicable to hold such assemblies of the people at large, but in all of them, except of course where those assemblies exist, the referendum in one of its two forms, compulsory or optional, has been engrafted on the local constitutions.[2] In addition to this reference to the popular vote, there is in some states a procedure known as the

[1] "Growth of the English Constitution," pp. 2-7. Since the above was in print, an article has appeared in the "Atlantic Monthly," for October, 1890, giving an interesting account of the Landsgemeinde of Uri in 1888, and showing that its accessories are somewhat simplified since the time, Dr. Freeman visited the canton, and studied this notable feature of purely democratic government.

[2] "Swiss law, like that of all other states possessing popular governments, gives to the people a certain right of initiative, in the right of petition—which is generally coupled with a duty on the part of the body petitioned to give to the prayers of all petitioners full and careful consideration. But it also goes much further. In many of the cantons an additional, an *imperative* initiation by petition is given to the people. Any petition which is supported by a certain number of signatures (the number is usually from five to six thousand) and which demands action upon any matter must be heeded by the council, a vote must be taken upon it by the council, and then it must be submitted to the popular vote, even if the action of the council upon it has been unfavourable. Of course certain formalities are required for the starting of these, so to say, authoritative petitions, or a certain backing by a portion of the members of the council. The constitution of Uri, for instance, now provides that petitions proposing changes in the constitution must bear at least fifty signatures; and that every voter may propose acts for the Landsgemeinde." Woodrow Wilson, "The State," sec. 519, p. 310.

"Initiative" which gives the right to the electors to move the representative councils to take up and consider any special subject of public interest. This is, however, still an experiment which has not yet taken a firm hold of the public mind. On the other hand, the referendum is now an essential feature not only of the federal constitution, but of the cantonal political systems. All revisions of the constitution to which the two branches of the federal assembly agree must be submitted to the referendum. When one of these councils agrees to such revision, but the other disagrees, or when fifty thousand voters demand amendment, the question of the proposed change must be submitted to a vote of the Swiss people. If a majority of the Swiss voters, in such case, vote in favour of making the amendment, then there must be a new election of both councils for the purpose of preparing the necessary change. The measure is then prepared by the federal council and submitted for the consideration of the two houses of the federal assembly. But the amendment, when passed by the assembly, does not go into force until it has been approved by a majority of the Swiss people, who vote on the question, and by a majority of the cantons of the confederation. All federal laws are also submitted to the vote of the people if thirty thousand voters or eight cantons demand such a reference. The same proceeding is necessary in the case of a federal resolution which has a general effect and is not of an urgent nature—the nature of urgency not being, however, a matter clearly susceptible of definition. In the case of a constitutional amendment, the referendum is "obligatory," but when it is only employed on the demand of the electors, it is "facultative" or "optional." In the cantons many important matters are submitted in the same way to the popular vote. On the whole, authorities declare that the system is popular and that it has the practical effect of making the people generally take a greater interest in public affairs. Some may think it must diminish the importance of the representative bodies, since their decisions on any question are liable to be reversed; but it also certainly tends to bring the members more in touch with public opinion, and force them to exercise greater discretion in legislation than if this popular vote were not hanging over them. This very democratic feature of the Swiss political system may be compared with the practice that exists in Canada of referring certain by-laws of municipal bodies, for the construction of public works, contracting loans, and giving subsidies to railways, to the vote of the ratepayers of the municipality, and to the opportunity given to the people in a district to accept or reject a local option law, like the Canada Temperance Act, at the polls on going through the forms required by the statute. There is also in Ontario, as in England, a statute which enables a municipality to establish a free library at the public expense, provided there is a majority of the ratepayers in favour of such an institution.[1] High authorities

[1] The first example of a local option law in Canada was the Canada Temperance Act of 1864 (Can. Stat. 27-28 Vict., c. 18). In this case the municipal council submitted a by-law, prohibiting the sale of liquor within their jurisdiction, to a vote of the people; and if a majority of all the votes polled were for the by-law, it was legally adopted. By the Canada Temperance Act of 1878, (Dom. Stat., 41 Vict., c. 16), it is provided that when a petition has been received by the dominion secretary of state from one-fourth or more of all the electors of a county or city, in favour of prohibiting the sale of liquor under the act, the governor-in-council will issue a proclamation providing for a vote on the petition. The vote is taken by ballot, and with all the formalities observed at legislative and municipal elections. A majority of all the votes in favour of the petition brings the law into operation. Similar measures are taken when it is wished to repeal the law after it has been in force for three years. See also Ont. Stat., 1890, c. 56, sec. 18. In the case of free libraries, the by-law of the council must be adopted by a majority of the qualified ratepayers of the municipality. For the procedure in Ontario in the case of municipal by-laws for the construction of water works, &c., see Rev. Stat. c. 184, ss. 293 *et seq.*, and 340 *et seq.*; c. 192, ss. 48, 49.

do not consider such references to the popular vote at all inconsistent with sound principle. It is not always essential "that a legislative act should be a competent statute which must in any event take effect as law at the time it leaves the hand of the legislative department. A statute may be conditional, and its taking effect may be made to depend upon some subsequent event." In many cases "the legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfect legislation, notwithstanding its actually going into operation as law may depend upon its subsequent acceptance."[1] No doubt the principle of the temperance and library acts could well be applied to other subjects not of a complicated nature—like bankruptcy and insolvency for instance—but involving broad and easily intelligible questions of public policy on which there is a decided division of opinion, which can be best resolved by a popular vote. The same principle of limiting the power of the representative assemblies of England and her dependencies has been compared with the practice of dissolving the parliament on the defeat of the government and obtaining an expression of opinion at the polls on the question at issue. Lest it be thought that this is a far-fetched idea, the reader is referred to the comments of Professor Bryce on the subject. "It is now beginning to be maintained as a constitutional doctrine," says this sagacious critic of institutions,[2] "that whenever any large measure of change is carried through the house of commons, the house of lords has a right to reject it for the purpose of compelling a dissolution of parliament, that is, an appeal to the voters. And there are some signs that the view is making way, that even putting the house of lords out of sight, the house of commons is not morally, though of course it is legally, entitled to pass a bill seriously changing the constitution, which was not submitted to the electors at the preceding general election. A general election, although in form a choice of particular persons as members, has now practically become an expression of popular opinion on the two or three leading measures then propounded and discussed by the party leaders, as well as a vote of confidence or no confidence in the ministry of the day. It is in substance a vote on those measures; although, of course, a vote only on their general principles, and not, like the Swiss referendum, upon the statute which the legislature has passed. Even, therefore in a country which clings to and founds itself upon the absolute supremacy of its representative chamber, the notion of a direct appeal to the people has made progress."

But while there are undoubtedly strong grounds for the comparisons made by Mr. Bryce, a dissolution in the English or Canadian sense can never elicit that unequivocal, free expression of public opinion on a question of importance, which the referendum must, in the nature of things, give whenever a popular vote is taken solely and exclusively on a measure. When parliament is dissolved, and a ministry goes to the people, it is not possible under a system of party government to prevent the real question at issue —say, for argument's sake it is Home Rule in Ireland, or the National Policy in Canada —being complicated by the introduction of issues entirely antagonistic to a definite verdict on it alone. The success of the party to which men belong will as a rule—we may say, almost invariably—outweigh all considerations that should, and would in the ordinary

[1] See Cooley, "Constitutional Limitations," pp. 139-148.

[2] "The American Commonwealth," ii, 71, 72.

nature of things, influence them to support a great vital measure of public policy to which their leaders are opposed. We have examples in the history of Canada and of England too, of constituencies forgetting all considerations of truth, justice and morality, and simply looking to the success of a particular candidate because he is a supporter of the government or of the opposition of the day. The popularity of a great leader, and the natural desire on the part of his friends and followers to see him again victorious over his opponents, will lead men in times of violent party conflict to overlook reasons which, in all probability at moments of calmness, apart from the excitement of the strife, would influence them—and I am speaking of honest-minded men and not of political machines —to look to the measure and not to the leader. The abuses of party government are obvious to every thoughtful man, but still experience seems to show that it is impossible to carry on a government, under a system which gives all power to a majority in an elected or representative body, except under conditions which array two hostile camps on the floor of parliament and in the country. A conservative majority will have a conservative ministry, and the same with the liberals. In the United States, party government is under the control of political rings, the caucus, conventions, and machine politics, which have sadly weakened public morality in the course of time. There, too, republicans and democrats are arrayed against each other on the floor of congress where the political situation is complicated by the fact that there is no ministry to guide and direct legislation and assume all the responsibilities of power. Party government, when practised with all that sense of political obligation that attaches to a set of sworn ministers, sitting in parliament, exposed to the closest criticism, fully alive to the current of public opinion, is very different from party government, when worked by a president and cabinet, not immediately answerable to the legislature or to the people, and by a congress practically governed by committees, not responsible to the authority that appointed them ; that is, the Speaker whose duty, as a leader of his party, ceased with their nomination. In Switzerland, on the other hand, the cabinet being virtually a mere administrative body,—its members being chosen for their ability to perform certain public duties,— does not depend on party in the English or Canadian sense, although of course the assembly that elects it is influenced by the knowledge that its members represent certain opinions and principles which commend themselves to the majority of the houses. When a question comes before the people under the referendum, there are no considerations of party to influence the decisions of the people ; men are not swayed by a desire to keep a particular set of men in office. The nature of the measure submitted to them is well known to them ; it has been thoroughly discussed in the councils of the nation, and throughout the country, and men are well able to give their vote on its merits. A vote under the Swiss referendum, and an appeal to the people under the English system are therefore subject to conditions, which in the one case generally give an impartial expression of opinion on a question, and in the other case may practically bury a great measure of public policy under the weight of entirely subordinate and irrelevant issues.

Sir Henry Maine, like some other writers, has confounded the referendum with a *plébiscite*,[1] but Mr. Dicey, in an admirable article in an English review,[2] shows that no two institutions can be marked by more essential differences. "The *plébiscite*," he says,

[1] "Popular Government," pp. 40, 41.

[2] "Contemporary Review," April, 1890.

" is a revolutionary, or at best abnormal proceeding. It is not preceded by debate. The form and nature of the question to be submitted to the nation is chosen and settled by the men in power. Rarely indeed, when a *plébiscite* has been taken, has the voting itself been either fair or free..... The essential characteristics, the lack of which deprives a French *plébiscite* of all moral significance, are the undoubted properties of the Swiss referendum. When a law revising the constitution is placed before the people of Switzerland, every citizen throughout the land has enjoyed the opportunity of learning the merits and demerits of the proposed alteration. The subject has been 'threshed out,' as the expression goes, in parliament; the scheme, whatever its worth, has received the deliberately given approval of the elected legislature; it comes before the people with as much authority in its favour as a bill which in England, has passed through both houses. The referendum, in short, is a regular normal, peaceful proceeding, as unconnected with revolutionary violence or despotic coercion and as easily carried out as the sending up of a bill from the house of commons to the house of lords. The law to be accepted or rejected, is laid before the citizens of Switzerland in its precise terms; they are concerned solely with its merits or demerits; their thoughts are not distracted by the necessity for considering any other topic."

In the political systems of the confederations of Canada and Switzerland there are many points of comparison, as it must be quite obvious to the reader of this paper. The governing bodies of the two countries are respectively the federal assembly and the house of commons, both of which have control over all the general and national matters of the federal state. Though dissolution, as I have just shown, is a very inferior weapon compared with the referendum to obtain a clear expression of public opinion on a question of public policy, yet like that great instrument of democratic sovereignty, it can and does practically act as a means of popular restraint upon the acts of the house of commons of the Dominion and of the legislative bodies of the Provinces. A greater degree of authority, however, is given to the Canadian executive by the fact that it has always within its control the dissolution of the body to which it owes its existence. The distribution of powers between the federal and the cantonal authorities resembles in essential particulars the division between the Dominion and the provinces. The fact that the residuum of the power rests in the federal government of Canada, gives it necessarily greater authority than the Swiss federal state can exercise in critical times. In the very important matter of militia and defence the Swiss constitution is less effective than the Canadian constitution, which centres in the general government all authority instead of dividing it with the provinces, as is practically the case in the Swiss confederation—a defect which is attracting the attention of Swiss statesmen. But despite the divided authority in this particular, the system of organization for defence is remarkably efficient—infinitely more so than that of Canada, and has deservedly won the encomiums of the best military authorities throughout the world.[1] Indeed in other cases there is a

[1] At the present time Switzerland with a population only a million in excess of the province of Ontario, maintains a remarkably effective force of 200,000 men, composed of (1) The Elite, or all men able to bear arms from the age of 20 to 32; (2) The Landwehr, or all men from the 33rd to the completed 44th year. In addition to this practically regular force, there is the Landsturm which can only be called out in time of war, and consists of all citizens not otherwise serving, between the ages of 17 and 50 or (in the case of ex-officers) 55. The Elite is mostly made up of infantry, viz, 95,748; and the same is true of the Landwehr, viz, 65,326. Cavalry is necessarily of little use in a country like Switzerland. See "Statesman's Year-Book" for 1890, pp. 986-8.

distribution of powers between the central and cantonal authorities which renders the working of the federal organization unsatisfactory. But these are defects which are peculiar to a federal system, and our own federation has its weaknesses in this respect, as the numerous cases of conflict of jurisdiction that have come before the courts from time to time for settlement clearly prove. Inconveniences have arisen, for instance, in our case from the fact that the constitution does not clearly define the power which should deal with questions relating to factory labour, although the weight of authority now appears to give the jurisdiction to the provinces. The Swiss constitution in this particular is an improvement on ours, since it gives the central government jurisdiction over such matters and enables it to pass uniform laws for the whole confederation. Indeed, if we review closely the two federal systems, we see that in some cases our constitution is vague where that of the Swiss is clear, and *vice versa*. Each system has been adapted to the necessities and conditions of the country. The Swiss are quite content with their own constitution, which is not a mere imitation of that of the United States, but one sagaciously adjusted to the political circumstances of a country where democracy is the form of government, and the cantons have long been the home of the liberties of the people. Both systems of government rest on the basis of the popular suffrage—the Swiss system of referendum giving necessarily greater power to the democratic element of the constitution. But the result is practically the same in Canada—it is the people that rule.

The most interesting reflections must naturally come to the mind of the statesman or publicist when he contrasts the effects of a federal system on the political and social conditions of two countries like Canada and Switzerland, which have many points of resemblance. It is true the population of Canada is already much larger than that of Switzerland, while the territorial greatness of the one prevents any comparison with the limited area of the other, and Canada has possibilities before her which the European federation can never attain.[1] But Switzerland has been the home of free institutions for ages, and has worked out the federal principle under difficulties which are worthy of the serious consideration of our statesmen and thinkers who are endeavoring to solve many political problems under circumstances of trial and embarrassment. Among the mountains of High Germany, exactly seven centuries ago, three little states first made alliances to preserve the freedom which they inherited from their Teutonic forefathers, and as the years passed by other small communities were brought into the confederation, until now they form practically twenty-five free cantons or states, with a population composed of several nationalities, speaking principally German, French and Italian,[2] and professing different religions. The Protestants and the Roman Catholics are numerically nearly in

[1] Yet this country, with a population of only 3,000,000 altogether, or 2,000,000 less than that of Canada, and with an area of only 15,892 English square miles—about the same as that of Vancouver Island, and 6,000 square miles less than Nova Scotia—has a total aggregate trade of imports and exports valued at $290,000,000 a year, or about $90,000,000 in excess of that of the Dominion.

[2] "At present German is spoken in fourteen cantons and parts of others; French wholly in three cantons while Italian is confined to the canton of Ticino and a part of Graubünden. To state the relations between these groups in another way—there are 1,352 German communes, 945 French and 291 Italian. Besides these there are 118 communes in Graubünden, where the Romansch language is used. Only German, French and Italian, however, are regarded as official languages, and in these three all the federal laws are published; and they may be all used in the transaction of federal business, whether in the assemblies, in the council or in the courts. Moreover, all must be represented in the federal council. The Romansch language, on the other hand, is not an official language, and is seldom employed in the affairs of the federal government." Moses, pp. 7, 8.

the same proportion as they are in Canada.[1] Ticino, Valais, Luzern and Freiburg are almost all Roman Catholic, just as Vaud, Neuchâtel, Shaffhausen, Bern and Zürich are almost all Protestant. In other cantons the people are fairly divided between the two denominations. In the federal assembly the French, German and Italian languages are freely used in the debates and proceedings. Switzerland in the course of her eventful history, has had to pass the ordeal of many feuds and trials, from which Canada has been happily spared since the trouble of 1837-38. The geographical situation of Switzerland, in the midst of different races and religions, has made her necessarily an arena of conflict in times of religious strife and controversy in Europe. This strife has raged on her own soil with great intensity. The history of the Reformation is associated with the history of Switzerland, and the names of Knox and Calvin must always cling to the old town of Geneva. We see the result of the religious dissensions that have excited the cantons like other parts of Europe for centuries in the fact that the constitution expressly interdicts the Jesuits from coming into the country. The same prohibition is extended to other religious bodies whose action may be considered dangerous to the state or liable to disturb the peace between sects. No bishopric can be created upon Swiss territory without the consent of the confederation, and the foundation of new convents and orders is forbidden. The constitution at the same time declares in general terms that freedom of conscience and belief is inviolable; that the exercise of civil or political rights cannot be abridged by any provisions or conditions whatever of an ecclesiastical or religious kind. The cantons and the confederation may take suitable measures for the preservation of public order between the members of different religious bodies and also against any encroachments of ecclesiastical authorities upon the rights of citizens or those of the states. Switzerland, indeed, despite the broad enunciation of religious freedom laid down in her constitution, shows no such liberal spirit as Canada in all matters of religion. The latter permits all religious sects to pursue the even tenor of their way, and can interfere in no respect with their recognized rights and privileges as long as its members keep within the limits of their authorized jurisdiction and do not infringe the laws of the Dominion. The Salvationist has been as free as the Roman Catholic to pursue the peculiar methods of his curious religious system. This principle has been practically the governing principle in Canada since it came under British dominion. Religious freedom has always kept pace with the extension of political rights ever since 1774. The Quebec act, we know, was a recognition of the rights of Roman Catholics in Canada long before the same body was relieved from old disabilities in Great Britain.[2] It is only on this basis of complete religious freedom and equality that Canada could have been so long happily governed, and the moment we depart from its principle the happiness and peace we have so long enjoyed must be seriously disturbed.

No country in the world has had greater difficulties to surmount than this confederation of cantons that have been struggling for centuries among the mountains to preserve their local institutions and to maintain their independence in the face of the aggressive powers which hem them in on every side. Their history from its beginning is a record

[1] The census of 1888 showed that there were in Switzerland 1,724,257 Protestants and 1,190,008 Roman Catholics. In Canada the census of 1881 showed the Protestants to number 2,439,188 and the Roman Catholics 1,791,892. The new census shortly to be taken is not likely to alter this proportion.

[2] *supra*, p. 18.

of feuds between town and country, of the struggle of a democracy against aristocratic pretensions, of tyranny exercised over subject and dependent lands, of social and political wrongs and inequalities, of race animosity, of religious strife, of cantonal arrogance, even threatening national existence; and ever and anon there have been times when it seemed as if they would be absorbed by other nations, as between 1793 and 1813, when France was dominant in the cantons, or as if they would fall to pieces through such divisions as ended in the war of the Sonderbund. Now, happily for the peace and security of the confederation, Switzerland has at last surmounted successfully the numerous and serious difficulties arising out of her peculiar position, and has grown in strength and power under the influence of the federal system of government, which above all other political systems, as her own history has proved, is best calculated to bring different nationalities and denominations into a strong union based on principles of self-interest and common safety. It has been sometimes urged that the federal system is weak because it means a division of powers between the central and the provincial or state authorities. In no other way would a union in certain cases be possible. Separate communities having diverse interests, may be brought together for a common purpose and show all the strength of a unified or centralized nation, provided you allow them to preserve intact all those strictly local powers and institutions necessary to local autonomy and individual independence. and not antagonistic to the vital interests and security of the whole confederation. The Roman empire was a remarkable example of centralization in its most ambitious form, but it fell to pieces because the spirit of local freedom was crushed in the outlying provinces, and there was no system of representation to bring the members into unison with the head of the body politic. The monarchy of Louis XIV was an autocratic, centralized government, which gave the provinces of France hardly a semblance of local government, and gradually exhausted the very life-blood of the nation. The British empire has extended over the habitable globe until even the Roman empire sinks into insignificance compared with its enormous wealth and true greatness, but it has so far kept together and maintained its power, because England has given free local government to every community that is competent to exercise it, and has only retained in her hands that imperial control which is necessary to the defence and security of her imperial interests and the fulfilment of her imperial obligations. Local government rests at the very basis of every system of federation—indeed of any state that is truly strong—and enables the central power to act effectually in the general interests of the whole federation. The Dutch communities at the mouth of the Rhine fought for freedom on the same basis of a federal union against all the power of the great empire of Spain. Switzerland has been able in the same way to maintain her liberty inviolate in the face of European nations. No doubt the jealousies of surrounding countries have had their influence on the destiny of this free community, but even the guarantees given by the great powers of Europe for her security would have been useless had not the Italians, the French, and the Germans of the cantons always felt that their true interests lay in a common union between each other. The principles of free government have been always maintained in Switzerland when they had been lost in other countries of the Aryan family. No system of complete centralization could have given that cohesion of interests which has been possible under a system which has left untouched the local freedom of the cantons, and at the same time given them representation in the federal government. At the present time, we are told by

the best authorities on the condition of the country, that never was the spirit of patriotism stronger than it is now. An attack by whatever neighbour would assuredly cause the cantons to lay aside all local jealousies and rivalries and combine for the common security. While there is "a sturdy sentiment of cantonal rights, engendered especially by a long period of self-government, there is also, whenever occasion requires, as manifested in patriotic gatherings, and in a firm attitude towards the outer world, that aggregate sentiment of nationality without which the confederation would separate into its several parts and cease to exist as a whole."[1] The Italians or the Germans or the French of the different cantons have had no aspirations whatever towards political connection with the great nations speaking the same languages. Switzerland is now the land around which all their hopes, affections and ambitions centre. The force of a national sentiment, and the ability of a federal state to fight for union, were shown in the ever memorable civil war in the American republic. Slavery became a subsidiary question as the struggle proceeded, and the preservation of the union was essentially the great motive power that gave strength to the north and west. Even in our own history we have seen the celerity with which a federal government can grapple with a nascent rebellion, and assert the authority of the federal state. While every section or state of a federation must have such attributes of power as are necessary to purely local self-government, there must always be placed in the central authority full control over the peace, order, and security of the people as a whole. This power is as necessary to a federal nation like the United States as it is to a strongly unified state like England. An acute thinker has on this point stated the respective powers and responsibilities of a federal state very clearly. "Stated broadly, so as to acquire somewhat the force of a universal proposition," says

[1] See Adams, "Swiss Confederation," p. 27. "Under very peculiar circumstances," says the well informed and able writer in the 'Edinburgh Review,' before referred to, "Swiss statesmanship has solved problems which perplex most European states. In Switzerland national defence is secured (as far as any small state can secure it) by the maintenance of a large, a cheap, and an effective force, which displays much of the discipline, and brings on the country none of the evils of a standing army; every citizen is a soldier, and every soldier is a citizen. National finances are prosperous and the country is not overburdened by a national debt; education has permeated every class, and Zürich has achieved results which may excite the envy of Birmingham or of Boston (and let me add of Toronto, where the art and technical schools are still inferior). Among a people traditionally disposed to lawlessness complete liberty has been made compatible with order, and theological animosities, which for centuries have been the special bane of the confederacy, have been assuaged or removed by the healing influence of religious freedom and equality.... Small and often hostile states have been fused into a nation.... Swiss democracy has, then, met and triumphed over all the obstacles to national unity arising from differences of race, from religious discord, from historical animosities, and from the difficulty inherent in federalism of reconciling national authority with state rights.... Her present peace and unity are due, as far as national prosperity is ever in reality caused by forms of government, to the Swiss constitution, which has achieved all that the best framed of polities can achieve—namely, the giving free scope to the energy and ability of the nation." And Freeman asserts that "the Swiss people, Teutonic and Romance, Catholic and Protestant, undoubtedly forms a nation, although artificially put together out of fragments of three elder nations." See p. 388 of his essay on "Practical Bearings of European History." And I may add the testimony of another thoughtful student of Swiss institutions, that of Professor Moses: "They (the cantons) are representatives of a large class of political organizations which became conspicuous in the later centuries of the middle ages. The fact that has given them special significance is their union and the development among them of social and political ties, which have established the essential conditions of national life and growth. This revolution, effected by the peaceful processes of constitutional amendment and legislation, has placed the events of Swiss history during the last fifty years in line with the movements towards unity which have been carried on in Italy and Germany, and by binding the several cantons so firmly under a central power as to remove the liability of disintegration, has justified the emphasis here given to the establishment of federal institutions as the most important achievement in the political history of Switzerland."

Mr. Fiske,[1] "the principle of federalism is just this: that the people of a state shall have full and entire control of their own domestic affairs, which directly concern them only, and which they will naturally manage with more intelligence and with more zeal than any distant governing body could possibly exercise; but that, as regards matters of common concern between a group of states, a decision shall in every case be reached not by brutal warfare or by weary diplomacy, but by the systematic legislation of a central government which represents both states and people, and whose decisions can always be enforced, if necessary, by the combined physical power of all the states." In fact, a central power must always be able to exercise its authority in great national crises with courage and determination. Local independence and national strength, must exist in a federation, but any unwarrantable assertions of sectional claims that may threaten the integrity of the federal state must be always promptly repressed.

I believe that the great governing principle of the world in the future is federation, by which all communities, whether of the same or different nationalities, can successfully unite on the basis of great common interests. The force of the idea has been acknowledged in modern history by Germany and Austria-Hungary, and has received its most powerful advocacy among the mountains of Switzerland. On the same principle the United States of America have built up one of the strongest and certainly the most prosperous nations in the world, and Canada has been able to unite diverse interests and nationalities so far with encouraging results. The colonies of Australia are awakening from the indifference and the jealousies which have heretofore prevented them from forming that complete union so necessary to the development of their common interests, and to the security of their island continent, and are at last moving to follow the example of their co-workers in America in the cause of civilization and good government.[2] No one can confidently assert, that, with the experience of the history of Europe and America before us, this powerful principle combining national strength and local independence may not be possible of expansion throughout the British empire, and that the beginning of a new century may not see all its component, and self-governing parts brought together into a union which shall satisfy the aspirations of every free community, give them an actual voice in imperial councils, and at the same time afford guarantees of the security and integrity of the whole, which do not seem possible under a system which is building up in every part of the world distinct and separate nationalities, ever increasing in population and vigour, and animated more and more by those national aspirations which are natural to every free people.

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[1] "American Political Ideas," p. 133.

[2] Since the above was written, the several legislatures of Australia are moving practically in the matter, and will probably appoint delegates without delay to a national Australian convention to frame a federal constitution for the Australasian colonies. "These colonies," said the eminent premier of New South Wales, Sir Henry Parkes, in proposing a resolution to that effect, "in point of numbers, and advancement, are ripe for union, and the time is come when it can be successfully carried out, and these young communities may spring, as it were, into their full manhood. This country, so wondrously fair in its productive powers, so wonderfully rich in the variety of its natural resources, so blessed in climate, so blessed by the race who have taken possession of it, has since been waiting for the divine touch to call it into national life." 'Sydney Herald,' May 8, 1890.